

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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NICE SYSTEMS, INC. and	:	
NICE SYSTEMS LTD.,	:	
	:	Civil Action No. 06-311-JJF
Plaintiffs,	:	
	:	
v.	:	
	:	
WITNESS SYSTEMS, INC.,	:	
	:	
Defendant.	:	
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PROPOSED PRE-TRIAL ORDER

On January 9, 2008, at 1:00 p.m., counsel for plaintiffs NICE Systems, Inc. and NICE Systems, Ltd. ("NICE") and counsel for defendant Witness Systems, Inc. (also known as Verint Americas Inc. and hereinafter referred to as "Witness Systems") shall attend a final pre-trial conference before this Court. The following matters as to the trial currently scheduled to begin on January 14, 2008 are hereby ordered by the Court.

I. NATURE OF THE ACTION AND PLEADINGS

1. On May 10, 2006, NICE filed suit against Witness Systems, alleging in its complaint that Witness Systems has been and is infringing one or more claims of U.S. Patent Nos. 5,274,738 ("the '738 patent"), 5,396,371 ("the '371 patent"), 5,819,005 ("the '005 patent"), 6,249,570 ("the '570 patent"), 6,728,345 ("the '345 patent"), 6,775,372 ("the '372 patent"), 6,785,370 ("the '370 patent"), 6,870,920 ("the '920 patent"), 6,959,079 ("the '079 patent"), and 7,010,109 ("the '109 patent") within the United States by manufacturing, using, selling and offering for sale products including, but not limited to, ContactStore, ContactStore for IP, ContactStore for Communication Manager, Quality for Communication Manager,

Impact 360 and eQuality Balance, and that Witness Systems' infringement is willful and deliberate. [D.I. 1].

2. On May 24, 2006, the parties jointly stipulated to an extension of time for Witness Systems to file responsive pleadings to NICE's Complaint. [D.I. 6]. The Court granted the extension of time to plead in response to the Complaint on May 30, 2006.

3. On June 29, 2006, Witness Systems filed a Motion to Transfer the case to the Northern District of Georgia. [D.I. 13]. The Court entered a stipulated order to extend the time for remaining briefing with regards to Witness Systems' Motion to Transfer on July 18, 2006. On July 28, 2006, NICE filed its Opposition to Witness Systems' Motion to Transfer. [D.I. 24]. On August 11, 2006, Witness Systems filed its Reply to the Motion to Transfer. [D.I. 32]. The Court denied Witness Systems' Motion to Transfer on October 12, 2006. [D.I. 39].

4. On June 30, 2006, Witness Systems filed an Answer to the Complaint. [D.I. 17].

5. A scheduling conference was held on October 12, 2006. A Joint Proposed Scheduling Order was executed by the Court on October 30, 2006. [D.I. 46].

6. On January 30, 2007, Witness Systems filed an Amended Answer to NICE's Complaint and a Counterclaims against NICE for declaratory judgments of noninfringement and invalidity. [D.I. 64].

7. On February 21, 2007, NICE filed its Reply to Witness Systems' Amended Answer and Counterclaim. [D.I. 73].

8. On March 21, 2007, Witness Systems moved for leave to file its Second Amended Answer, Defenses, and Counterclaims. [D.I. 85].

9. On April 13, 2007, the Court granted Witness Systems motion for leave to file its Second Amended Answer, Defenses, and Counterclaims. [D.I. 96]. By that same Order, the Court “separate[d] and stay[ed] all proceedings related to the antitrust claim until the pending claims are tried.”

10. On June 26, 2007, this Court held a Markman hearing on claim construction issues, the transcript of which was filed on July 25, 2007. [D.I. 216]. The Court accepted a Stipulation Regarding Agreed Claim Construction Terms on June 29, 2007.

11. On October 17, 2007, this Court signed an Order formalizing NICE’s notice on September 28, 2007 [D.I. 233] of withdrawal of 29 claims at issue. [D.I. 237]. On November 5, 2007, this Court signed an Order formalizing NICE’s withdrawal of an additional 17 claims at issue, which resulted in the elimination of the ’738 and ’079 patents from this action. [D.I. 251]. On December 13, 2007, NICE withdrew an additional 14 claims at issue. [D.I. 275]. In its December 14, 2007 Memorandum Order, this Court stated “that Plaintiff has sufficiently narrowed its case to be understandable and manageable for a jury trial.” [D.I. 280]. NICE is further withdrawing claims 14 and 48 of the ’345 patent, which results in the elimination of the ’345 patent from this action. Presently, eleven (11) claims from the five patents-in-suit remain for trial. NICE asserts that Witness Systems’ products and software infringe, literally and under the doctrine of equivalents, the following claims:

- claims 1 and 8 of the ’371 patent;
- claim 6 of the ’570 patent;
- claims 1, 15 and 33 of the ’372 patent;
- claims 1, 16 and 21 of the ’920 patent; and
- claims 1 and 6 of the ’109 patent.

12. On December 6, 2007, this Court held a pre-trial conference at which the Court bifurcated the issues of inequitable conduct and unclean hands from the jury trial. In doing so, the Court stated:

I agree with you, that plaintiff wants to have willfulness, damages, everything done at once. So there typically is overlapping evidence, particularly when you have all of the patent issues tried in one trial. And I understand that's what plaintiff wants, and that's what they're getting. You get what I would call the advantage of that decision, because although they don't want a lot of that inequitable conduct, unclean hands evidence to go before the jury, it's going to get there by virtue of their desire to have all patent issues tried to the jury at once. You get the second advantage, if there's some discrete evidence that you're not going to be able to convince me is overlapping to a patent issue, being tried to the jury, I'll give you the chance to have a couple hours to put that witness on, and I'll hear it.

[D.I. 278].

13. On December 17, 2007, Nice filed an Identification of Witness' Core Recording Products Accused of Infringement. In short, those four core products are (i) Balance, (ii) Contact Store (including certain Nortel products), (iii) ContactStore for IP (including certain Nortel Products) and (iv) ContactStore for Communication Manager. Witness contends that NICE identified multiple versions of at least fourteen distinct Witness Systems products. [D.I. 281]. NICE disagrees with Witness' contention that there are fourteen distinct Witness Systems products accused of infringement and contends that, even if fourteen distinct Witness Systems products are accused of infringement, they can be represented as four core products.

II. BASIS FOR FEDERAL JURISDICTION

1. NICE's action for infringement arises under the patent laws of the United States, Title 35, United States Code. This Court has subject matter jurisdiction over NICE's infringement claims pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338(a).

2. Witness Systems' counterclaims for declaratory judgment arise under the patent laws of the United States, Title 35 of the United States Code. Witness Systems' counterclaims for antitrust violations arise under Title 15 of the United States Code. The Court has subject matter jurisdiction over Witness Systems' counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201; and 15 U.S.C. §§ 15 and 26.

3. Neither party contests this Court's personal jurisdiction over the litigants.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

III. STATEMENT OF ADMITTED FACTS

1. The parties' Joint Statement of Admitted Facts is attached as Exhibit 1.

IV. STATEMENT OF ISSUES OF FACT

1. NICE's Statement of Issues of Fact that remain to be litigated is attached as Exhibit 2.

2. Witness Systems' Statement of Issues of Fact that remain to be litigated is attached as Exhibit 3.

V. STATEMENT OF ISSUES OF LAW

1. NICE's Statement of Issues of Law that remain to be litigated is attached as Exhibit 4.

2. Witness Systems' Statement of Issues of Law that remain to be litigated is attached as Exhibit 5.

VI. EXHIBITS

1. The parties will offer as exhibits at trial one or more of the exhibits set forth on their respective exhibit lists. These lists include the exhibit number to be used at trial and a description sufficient to identify the exhibit, *i.e.*, by production number, deposition exhibit number, or other means. Witness Systems objects that many of the exhibits listed on NICE's

exhibit list either have not been produced to Witness Systems or are not described with sufficient particularity to identify the exhibit, *e.g.*, Ex. 651, "www.tmcnet.com". In such instances, Witness Systems reserves the right to provide objections to those exhibits once the parties exchange final exhibits with final exhibit labels.

2. Any party may use an exhibit on the other party's list, to the same effect as though it was on its own list, subject to all evidentiary objections. That is, a party placing an exhibit on its exhibit list shall not be deemed to concede that it is admissible if used by the opposing party, and shall preserve all evidentiary objections thereto. Any exhibit, once admitted, may be used equally by either party.

3. The parties have agreed to the admissibility of the patents-in-suit.

4. NICE's list of exhibits (with Witness Systems' objections and NICE's stated bases for admission) is attached as Exhibit 6. NICE reserves its right to list additional trial exhibits based on the deposition testimony of the parties' technical and damages experts; exhibits needed for rebuttal and impeachment purposes; exhibits responsive to Witness Systems' exhibit list; and exhibits used at recently taken depositions. NICE also reserves its right to generally supplement its exhibit list prior to the pre-trial conference. Witness Systems' objections to specific documents are noted thereon, except as to relevance.

5. Witness Systems' list of exhibits (with NICE's objections) is attached as Exhibit 7. As of June 30, 2007, the Local Rules of this Court were amended, deleting the requirement that the Proposed Pretrial Order include a recitation of "the Federal Rule[s] of Evidence relied upon by the proponent of the exhibits." L.R. 16.3(c)(6) (as amended June 30, 2007). Moreover, as NICE did not provide Witness Systems with its objections to Witness Systems' proposed trial exhibit until late in the day that the parties filed the Proposed Pretrial Order, providing bases

for admission in response to NICE's objections was logistically impossible. To the extent the Court requires Witness Systems' stated bases for admission before the start of trial, Witness Systems will provide them in a timely manner. Witness Systems reserves its right to list additional trial exhibits based on the deposition testimony of the parties' technical and damages experts; exhibits needed for rebuttal and impeachment purposes; exhibits responsive to NICE's exhibit list; and exhibits used at recently taken depositions. Witness Systems also reserves its right generally to supplement, and/or reorder its exhibit list prior to the pre-trial conference. NICE's objections to specific documents are noted thereon, except as to relevance.

6. Each party shall exchange with the other party, no later than 7:00 p.m. on January 10, 2008, copies of its final exhibits with final exhibit labels.

7. The parties disagree on exhibit exchange on the evening before their expected use at trial.

NICE proposes the following procedure:

The parties shall exchange demonstrative exhibits in electronic form and identify any anticipated evidence that is the source of the information in the demonstrative exhibits, labeled with the demonstrative exhibit number to be used at trial, by 7:00 p.m. the day before they are intended to be used. The parties' respective objections to the demonstrative exhibits, if any, shall be raised with the opposing party by 9:30 p.m. the day before they are intended to be used. If the parties cannot, in good faith, resolve any objections to the demonstrative exhibits, the objections shall be raised with the Court prior to the start of the following trial day

and prior to any testimony or argument pertaining to the particular exhibit.

NICE is concerned that a more expansive exchange, if not interpreted and implemented similarly by the parties and if not subject to an enforcement mechanism, will not accomplish the intended objective of streamlining case presentation, but rather may prejudice a cooperative party and confer unfair advantage onto a non-cooperative party.

Witness Systems proposes the following procedure:

Unless agreed to otherwise, each party will provide to the other party a written list of exhibits (and a copy of any demonstrative exhibits), by exhibit number and witness(es) for whom the exhibit will be used, that it intends to use on direct examination in court, by 7:00 p.m. on the trial day preceding the day on which the exhibits and/or demonstratives are intended to be used and the witnesses are intended to be called. The parties will meet and confer on any objections by 9:30 p.m. that evening and will present any unresolved issues to the Court the morning of the proposed use of the disputed exhibit and/or demonstrative. The parties hereby agree that, once confirmed, the exhibits and demonstratives to be used in direct examination may not change absent good cause.

8. Any exhibit identified in any party's exhibit list and not objected to at the time of this Order (except as described in this paragraph) may be admitted and entered in evidence, except over an objection of relevance. Each party herein expressly reserves the right to object to the relevancy of any evidence offered by the other party, at the time such evidence is

offered, in view of the specific context in which such evidence is offered. To the extent any party supplemented its exhibit list prior to the entry of this Order, the opposing party shall have 3 days to provide objections (other than as to relevance) to any newly added exhibits.

9. With regard to authentication and admissibility of NICE trial exhibits, NICE's position is that any document, that on its face appears to have been authored by an employee or officer of NICE at the time the employee or officer was employed by NICE, shall be deemed authentic, subject to the right of the party against whom such a document is offered to adduce evidence to the contrary. It is also NICE's position that any document, that on its face appears to have been authored by an employee or officer of Dictaphone, Inc. at the time the employee or officer was employed by Dictaphone, Inc. shall be deemed authentic, subject to the right of the party against whom such a document is offered to adduce evidence to the contrary.

10. With regard to the authenticity of Witness' trial exhibits, it is NICE's position that to the extent it seeks to admit a document produced in this litigation, it can rely on, among other things, Witness admissions made in response to discovery requests. Witness admitted, in its Response to NICE's First Set of Requests for Admission dated March 5, 2007, that "documents that were produced by it in this litigation and which were created by Witness are presumptively authentic" and that "the documents it produced from its business files presumptively constitute business records within F.R.E. 803(6)."

11. With regard to authentication and admissibility of all trial exhibits, Witness Systems' position is that any document that on its face appears to have been authored by an employee, officer, consultant or agent of a party or its predecessor-in-interest (including Dictaphone and/or Eyretel) shall be deemed authentic, subject to the right of the party against whom such a document is offered to adduce evidence to the contrary. It is also Witness

Systems' position that any document, that on its face appears to have been authored by employee, officer, consultant or agent of a party or its predecessor-in-interest (including Dictaphone and/or Eyretel) shall be deemed to presumptively constitute records of regularly conducted business activity within F.R.E. 803(6), subject to the right of the party against whom such a document is offered to adduce evidence to the contrary.

12. Legible photocopies of United States and foreign patents and publications and the contents of U.S. Patent Office file histories may be offered and received in evidence in lieu of certified copies thereof, subject to all other objections which might be made to the admissibility of such copies. The dates of filing and issuance and the identity of the inventors of record shall be deemed to be shown on the face of each such patent, subject to the right of the party against whom it is offered to adduce evidence to the contrary.

13. Legible copies of documents may be offered and received in lieu of originals thereof, subject to all other objections which might be made to the admissibility of such originals, and subject to the right of either party to inspect an original on request. Each such document shall be deemed to have been created on the date it bears (if any), subject to the right of the party against whom it is offered to adduce evidence to the contrary.

VII. WITNESSES TO BE CALLED IN PERSON OR BY DEPOSITION

1. NICE's list of witnesses that it may call in person at trial and a brief statement of the subject matter of each expert witness's testimony is attached hereto as Exhibit 8. To the extent Witness Systems objects to NICE calling any individual on NICE's list of witnesses, Witness Systems reserves those objections for motions in limine.

2. Witness Systems' list of witnesses that it may call in person at trial is attached hereto as Exhibit 9. To the extent NICE objects to Witness Systems calling any individual on Witness Systems' list of witnesses, NICE reserves those objections for motions in limine.

3. The parties' lists of deposition designations that they may offer at trial (other than in the course of cross-examining a witness) are attached hereto as Exhibits 10 (NICE's designations) and 11 (Witness Systems' designations). Deposition testimony is designated by deponent, litigation, date, and page and line number on which the testimony which the designating party wishes to introduce appears.

4. Each party will provide the other party with a list, in order of presentation, of witnesses whom it intends to call on direct examination by 7:00 p.m. two nights before those witnesses are intended to testify in court (designating whether each is live or by designation). Each party will provide a final list of witnesses (again designating whether live or by designation) that it intends to call to testify by 7:00 p.m. the trial day before the day the witness is expected to testify.

5. As described in Section VI, above, the parties disagree on the procedure for identifying exhibits and demonstratives to be used at trial. For live witnesses, NICE proposes that the notice shall only include a list of demonstratives as provided in Section VI, above. Witness Systems proposes that the notice shall include a list of exhibits and demonstratives to be used with each witness. Both parties propose that, under either proposal, no deviations from this notice shall be permitted except by agreement of the parties or for good cause shown.

6. No witness called by a party shall be permitted to testify unless identified in this Order.

7. The courtroom deputy will keep a running total of trial time used by counsel.

8. The parties have also agreed to reserve all objections to the deposition designations for trial and that attorney objections and colloquy will not be read at trial.

9. The parties shall prior to the beginning of trial endeavor to arrive at a mutually agreeable procedure for the handling of highly confidential documents and sensitive source code, produced in the course of discovery.

VIII. STATEMENT OF INTENDED PROOFS

1. In support of its claims, in addition to the facts not in dispute, NICE expects to offer the proofs set forth in Exhibit 12.

2. In support of its claims, in addition to the facts not in dispute, Witness Systems expects to offer the proofs set forth in Exhibit 13.

IX. MISCELLANEOUS

1. The parties' joint submission regarding jury instructions will be filed separately pursuant to Local Rule 51.1(a).

2. NICE's Statement of Miscellaneous Issues to Be Addressed at the Pre-Trial Conference is attached as Exhibit 14 hereto.

3. Witness Systems' Statement of Miscellaneous Issues to Be Addressed at the Pre-Trial Conference is attached as Exhibit 15 hereto.

4. The parties' Proposed Special Verdict Forms will be filed separately pursuant to Local Rule 51.1(c).

5. The parties' proposed voir dire will be filed separately consistent with Local Rule 47.1(a)(2).

6. Witness proposes:

If at any time during trial a juror wishes for particular questions to be posed to a witness during the witness' testimony, the juror may write his/her questions on a slip of paper and immediately hand the questions to the jury foreperson, who will then immediately pass the questions to

the Court. The Court will then review the question and decide whether to ask the question, and may (at the Court's discretion) either (a) ask the question or a modification of it at a time of the Court's choosing, and/or (b) pass the question to each parties' counsel.

NICE objects:

NICE objects to Witness Systems' proposed procedure as it will be disruptive to the administration of the trial.

X. CERTIFICATE OF ATTEMPTED RESOLUTION OF CONTROVERSY

1. The parties certify that they have engaged in a good faith effort to explore the resolution of the controversy by settlement.

XI. ORDER TO CONTROL COURSE OF ACTION

1. As required by Local Rule 16.3(d)(4), this Order shall control the subsequent course of this action, unless modified by the Court to prevent manifest injustice.

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Dated: January 7, 2008

SO ORDERED THIS _____ day of _____, 2008.

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United States District Judge

EXHIBITS TO PROPOSED PRE-TRIAL ORDER

EXHIBIT	DESCRIPTION	LOCAL RULE
1	Statement of Undisputed Facts	16.3 (c)(3)
2	NICE's Statement of Issues of Fact	16.3 (c)(4)
3	Witness' Statement of Issues of Fact	16.3 (c)(4)
4	NICE's Statement of Issues of Law	16.3 (c)(5)
5	Witness' Statement of Issues of Law	16.3 (c)(5)
6	NICE's Trial Exhibit List (with Witness' objections and NICE's bases for admission)	16.3 (c)(6)
7	Witness' Trial Exhibit List (with NICE's objections and Witness' bases for admission)	16.3 (c)(6)
8	NICE's Witness List	16.3 (c)(7)
9	Witness' Witness List	16.3 (c)(7)
10	NICE's Designation of Deposition Testimony (with Witness' Counter-Designations)	
11	Witness' Designation of Deposition Testimony (with NICE's Counter-Designations)	
12	NICE's Statement of Intended Proofs	16.3 (c)(8)
13	Witness' Statement of Intended Proofs	16.3 (c)(9)
14	NICE's Statement of Miscellaneous Issues to be Addressed at the Pre-Trial Conference	
15	Witness' Statement of Miscellaneous Issues to be Addressed at the Pre-Trial Conference	

EXHIBIT NO. 1 TO THE JOINT PRE-TRIAL ORDER

STATEMENT OF ADMITTED FACTS

1. Witness Systems, Inc. acquired a controlling interest in Eyretel plc (“Eyretel”), a United Kingdom company located in Leatherhead, United Kingdom, in 2003.
2. On February 12, 2007, Verint Systems, Inc. and Witness Systems, Inc. entered into an agreement under which Verint Systems, Inc. would acquire Witness Systems.
3. On May 25, 2007, Witness Systems, Inc. filed a Certificate of Amendment to its Sixth Amended and Restated Certificate of Incorporation, changing its corporate name to “Verint Americas Inc.”
4. Verint Systems, Inc. completed its acquisition of Witness Systems, Inc., now known as Verint Americas Inc., on May 29, 2007.
5. Verint Americas Inc. is a wholly owned subsidiary of Verint Systems, Inc.
6. NICE Systems, Inc. is a wholly owned subsidiary of NICE Systems, Ltd.
7. In June 2005, NICE Systems, Inc. acquired the assets (including its product lines and patents) of and assumed the liabilities of Dictaphone Corporation’s (“Dictaphone”) Communication Recording Systems business.
8. On March 7, 1995, U.S. Patent No. 5,396,371, entitled “Endless Loop Voice Data Storage and Retrieval Apparatus and Method Thereof” (“the ’371 patent”) was issued. Dictaphone was the assignee of the inventors John Henits, Robert B. Swick, Constantine P. Messologitis, and Christopher S. Goane. On May 31, 2005, Dictaphone assigned the ’371 patent to NICE Systems, Inc.
9. On June 19, 2001, U.S. Patent No. 6,249,570, entitled “System and Method for Recording and Storing Telephone Call Information” (“the ’570 patent”) was issued. Dictaphone

was the assignee of the inventors David A. Glowny, Phil Min Ni, and John E. Richter. On May 31, 2005, Dictaphone assigned the '570 patent to NICE Systems, Inc.

10. On August 10, 2004, U.S. Patent No. 6,775,372, entitled "System and Method for Multi-Stage Data Logging" ("the '372 patent") was issued. Dictaphone Corporation was the assignee of the inventor John Henits. On May 31, 2005, Dictaphone assigned the '372 patent to NICE Systems, Inc.

11. On March 22, 2005, U.S. Patent No. 6,870,920, entitled "System and Method for Multi-Stage Data Logging" ("the '920 patent") was issued. Dictaphone was the assignee of the inventor John Henits. On May 31, 2005, Dictaphone assigned the '920 patent to NICE Systems, Inc.

12. On March 7, 2006, U.S. Patent No. 7,010,109, entitled "Digital Recording of IP Based Distributed Switching Platform" ("the '109 patent") was issued. NICE Systems, Ltd. was the assignee of the inventors Hagay Gritzer, Ilan Freedman, Ilan Yosef, and Danny Shporer.

13. In or around October 2004, Witness Systems, Inc. became aware of the '570 and '372 patents.

14. In or around April 1999, Eyretel became aware of the '371 patent.

15. Witness Systems Inc. had knowledge of the '920 patent and '109 patents on May 10, 2006 and thereafter.

16. In January 2006, NICE began marking its Voice Over IP Logger, NICE Log, and NICE Perform Application Suite with the U.S. Patent number of the '371 patent, the '570 patent, the '372 patent, the '370 patent, or the '920 patent. In March 2006, NICE began marking its NICE Perform Compliance Suite with the U.S. Patent number of the '371 patent, the '570 patent, the '372 patent, the '370 patent, or the '920 patent.

17. In March 2006, NICE began marking NICE Perform Applications Suite and NICE Perform Compliance Suite with the U.S. Patent number of the '109 patent.

EXHIBIT NO. 2 TO THE JOINT PRE-TRIAL ORDER

NICE'S STATEMENT OF ISSUES OF FACT

Except where indicated otherwise, the following issues are submitted as issues for the jury. To the extent that any issues of law set forth in Exhibit 4 of the Joint Pre-Trial Order may be considered issues of fact, NICE hereby incorporates those portions of Exhibit 4 herein by reference. NICE also incorporates by reference those portions of Exhibit 14 that may be considered to raise issues of fact.

I. INFRINGEMENT

1. Whether Witness' manufacturing, using, selling and offering for sale of products identified in NICE's Identification of Witness' Core Recording Products Accused of Infringement, filed on December 17, 2007, (in short, those four core products are (i) Balance, (ii) Contact Store (including certain Nortel products), (iii) ContactSore for IP (including certain Nortel Products) and (iv) ContactStore for Communication Manager) in the United States infringes claims 1 and 8 of the '371 patent, claim 6 of the '570 patent, claims 1, 15 and 33 of the '372 patent, claims 1, 16 and 21 of the '920 patent, and claims 1 and 6 of the '109 patent, whether literally or under the doctrine of equivalents.

2. Whether with knowledge of the NICE patents, Witness, through, in part, its configuration of the products identified by NICE in NICE's Identification of Witness' Core Recording Products Accused of Infringement filed on December 17, 2007 (in short, those four core products are (i) Balance, (ii) Contact Store (including certain Nortel products), (iii) ContactSore for IP (including certain Nortel Products) and (iv) ContactStore for Communication Manager) its sales, offers for sale, manufacture, distribution, and maintenance and services of such products for these purposes, as well as its advertisements, promotions, demonstrations, sales efforts, sales, training, publication and distribution of product specifications, brochures,

catalogues, owner's and user's manuals, and other activities, contributed to infringement of the asserted claims of NICE's patents, or actively induced others to infringe, or itself contributed to the infringement of the asserted claims of NICE's patents.

II. RELIEF AND DAMAGES

1. Whether NICE is entitled to lost profits damages based on lost sales and present and future price erosion suffered by NICE as a result of Witness' infringing sales of products and the amount of such damages.

2. Whether NICE is entitled to reasonable royalty damages based on Witness' infringing sales of products and the amount of such damages.

3. Whether Witness willfully infringed NICE's patents, and if so, whether increased damages should be awarded pursuant to 35 U.S.C. §§ 284, 285 and 287.

III. Validity

1. Whether Witness has proven by clear and convincing evidence that claims 1 or 8 of the '371 patent, claim 6 of the '570 patent, claims 1, 15 or 33 of the '372 patent, claims 1, 16 or 21 of the '920 patent, or claims 1 or 6 of the '109 patent, are invalid as anticipated or obvious.

EXHIBIT NO. 3 TO THE JOINT PRE-TRIAL ORDER

***Witness Systems' Statement of Issues of Fact Remaining to be Litigated Regarding
Witness Systems' Defenses and Counterclaims***

Witness Systems intends to present the below listed issues of fact at trial. Except where indicated otherwise, the following issues are submitted as issues for the jury. To the extent that any issues of law set forth in Exhibit 5 of the Joint Pre-Trial Order may be considered issues of fact, Witness Systems hereby incorporates those portions of Exhibit 5 herein by reference.

I. NON-INFRINGEMENT

The following factual issues with respect to infringement remain to be determined at trial:

1. Whether NICE proved by a preponderance of the evidence that Witness Systems literally infringes the asserted claims of the patents-in-suit.
2. Whether NICE proved by a preponderance of the evidence that Witness Systems has contributed to the infringement of the asserted claims of the patents-in-suit.
3. Whether NICE proved by a preponderance of the evidence that Witness Systems has induced infringement of the asserted claims of the patents-in-suit.
4. Whether NICE is precluded from claiming infringement of under the doctrine of equivalents by the doctrine of prosecution history estoppel.
5. Whether NICE proved by a preponderance of the evidence that Witness Systems infringes any of the asserted claims of the patents-in-suit under the doctrine of equivalents, if applicable.
6. Whether NICE proved by clear and convincing evidence that Witness Systems' infringement of any of the patents-in-suit, if any, was willful.

II. INVALIDITY OF NICE'S PATENTS

The following factual issues with respect to the validity of NICE's patents remain to be determined at trial:

1. Whether any of the claims of the patents-in-suit are anticipated by the prior art under 35 U.S.C. § 102.
2. The level of ordinary skill in the relevant art at the time of the invention of each of the Patents-in-Suit.
3. Whether the prior art asserted by Witness Systems renders any of the asserted claims of the patents-in-suit obvious under 35 U.S.C. § 103.

III. INEQUITABLE CONDUCT

The following factual issues with respect to inequitable conduct remain to be determined at trial:

1. Whether one or more persons associated with the filing and prosecution of the application that led to the '371 patent intentionally failed to disclose to the United States Patent & Trademark Office ("USPTO"), during prosecution, information of which they were aware that is material to the examination of the application, in violation of the duties of candor and good faith required under 37 C.F.R. 1.56.

IV. UNCLEAN HANDS

The following factual issues with respect to unclean hands remain to be determined at trial:

1. Whether NICE is barred from enforcing the patents-in-suit against Witness Systems because it (or its predecessor) acted inequitably, unfairly, or deceitfully towards Witness Systems, the Court, and/or the USPTO in a way that has immediate and necessary relation to the relief NICE seeks in this lawsuit.

V. LACHES

The following factual issues with respect to laches remain to be determined at trial:

1. Whether NICE (and/or its predecessor, Dictaphone Corp. ("Dictaphone")) delayed in bringing a lawsuit for an unreasonable and inexcusable length of time after it knew or should have known of the potential infringement, resulting in material prejudice or injury to Witness Systems.

VI. EQUITABLE ESTOPPEL

The following factual issues with respect to equitable estoppel remain to be determined at trial:

1. Whether NICE (and/or Dictaphone) created, through words, conduct, or silence, a misleading inference that it did not intend to press an infringement claim against Witness Systems and/or its predecessor, Eyretel Plc.
2. Whether Witness Systems and/or its predecessor, Eyretel Plc, substantially relied upon NICE's and/or Dictaphone's misleading conduct.
3. Whether Witness Systems will suffer material economic or evidentiary prejudice if NICE is permitted to proceed with its infringement claim.

VII. DAMAGES AND OTHER RELIEF

The following factual issues with respect to the damages and other relief NICE seeks for the alleged infringement of the patents-in-suit remain to be determined at trial:

1. Whether NICE was damaged by any alleged infringement by Witness Systems.
2. What is the proper measure of any damages due to NICE as a result of Witness Systems' alleged infringement.
3. Whether lost profits is an appropriate measure of damages in this case.
4. Whether acceptable non-infringing substitutes for the patented inventions exist(ed).

EXHIBIT 4 TO THE JOINT PRE-TRIAL ORDER
NICE'S STATEMENT OF ISSUES OF LAW

To the extent that any issues of fact set forth in Exhibit 2 of the Joint Pre-Trial Order may be considered issues of law, NICE hereby incorporates those portions of Exhibit 2 herein by reference.

I. ISSUES ON WHICH NICE BEARS THE BURDEN OF PROOF AT TRIAL

A. Infringement

1. Direct Literal Infringement

A patent confers onto a patentee the right to exclude others from utilizing an invention. Specifically, 35 U.S.C. § 271(a) provides:

Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

The patentee has the burden of proving infringement by a preponderance of the evidence. Centricut, LLC v. Esab Group, Inc., 390 F.3d 1361, 1367 (Fed. Cir. 2004). An infringement analysis is a two step process -- “[f]irst, the meaning and scope of the asserted patent claims is determined, and then the properly construed claims are compared to the accused product or process.” Ranbaxy Pharms., Inc. v. Apotex, Inc., 350 F.3d 1235, 1239-40 (Fed. Cir. 2003). Step one, the claim construction, is a question of law, while step two, the comparison of the claims to the accused device, is a question of fact. Id. at 1240.

“It is axiomatic that the claims mark the outer boundaries of the patent right to exclude.” Astrazeneca AB v. Mut. Pharm. Co., 384 F.3d 1333, 1336 (Fed. Cir. 2004). Thus, infringement “is determined by comparing an accused product not with a preferred embodiment described in the specification, or with a commercialized embodiment of the patentee, but with the properly

and previously construed claims in suit.” Ccs Fitness v. Brunswick Corp., 288 F.3d 1359, 1370 (Fed. Cir. 2002) (citing SRI Int’l v. Matsushita Elec. Corp., 775 F.2d 1107 (Fed. Cir. 1985)). If accused matter falls within the boundaries of the claims, infringement occurs.

Literal infringement requires that each limitation of a properly interpreted claim be present in the accused product or process. Frank’s Casing Crew & Rental Tools, Inc. v. Weatherford Int’l Inc., 389 F.3d 1370, 1378 (Fed. Cir. 2004). If each element recited in a claim is found in the accused product or process, a party may not avoid infringement merely by adding additional features. See Free Motion Fitness, Inc. v. Cybex Int’l, 423 F.3d 1343, 1353 (Fed. Cir. 2005) (“Basic patent law holds that a party may not avoid infringement of a patent claim . . . by adding additional elements.”).

A means-plus-function element is a claim element that claims a means for performing a specified function. In order to show that a means-plus-function claim is literally infringed, three things must be established. First, the accused device must perform the specified function. See WMS Gaming Inc. v. International Game Tech., 184 F.3d 1339, 1350 (Fed. Cir. 1999). Second, if the accused product does perform the required function, the patentee must identify the structure in the accused product that actually performs this function. Id. Finally, the patentee must show that the accused structure is the same as or equivalent to the corresponding structure identified in the patent for performing the required function. Id.

2. Inducement of Infringement

35 U.S.C. § 271(b) states:

Whoever actively induces infringement of a patent shall be liable as an infringer.

Inducement requires evidence of culpable conduct, directed to encouraging another’s infringement, not merely that the inducer had knowledge of the direct infringer’s activities.

MGM Studios Inc. v. Grokster, Ltd., 125 S. Ct. 2764, 2780 (2005). The “plaintiff has the burden of showing that the alleged infringer’s actions induced infringing acts and that he knew or should have known his actions would induce actual infringements.” DSU Med. Corp. v. JMS Co., 471 F.3d 1293, 1304 (Fed. Cir. 2006). The requirement that the alleged infringer knew or should have known his actions would induce actual infringement necessarily includes the requirement that he or she knew of the patent. See Golden Blount, Inc. v. Robert H. Peterson Co., 438 F.3d 1354, 1364 n.4 (Fed. Cir. 2006).

3. Contributory Infringement

35 U.S.C. § 271(c) states, in pertinent part:

Whoever sells a component of . . . manufacture . . . or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringement use, shall be liable as a contributory infringer.

Under 35 U.S.C. § 271(c), the plaintiff must show “that an alleged contributory infringer knew that the combination for which his components were especially made was both patented and infringing.” Preemption Devices v. Minnesota Min. & Mfg. Co., 803 F.2d 1170, 1174 (Fed. Cir. 1986).

The plaintiff must also show that the alleged contributory infringer’s component “is not a staple article suitable for substantial noninfringing use.” Id. “A non-staple article is one which was designed to carry out the patented process. A staple article of commerce is one that was not specifically designed for use with a patented process and has substantial, efficient and feasible uses outside of the patent.” Polysius Corp. v. Fuller Co., 709 F. Supp. 560, 576 (E.D. Pa. 1989).

“Proof of contributory infringement may be based on circumstantial evidence.” Lucas Aerospace, Lt. v. Unison Indus., L.P., 899 F. Supp. 1268, 1286 (D. Del. 1995).

The doctrine of contributory infringement serves “to protect patent rights from subversion by those who, without directly infringing the patent themselves, engage in acts designed to facilitate infringement by others.” Dawson Chem. Co. v. Rohn & Haas Co., 448 U.S. 176, 188 (1980).

4. Infringement Under the Doctrine of Equivalents

Under the doctrine of equivalents, “a product or process that does not literally infringe upon express terms of a patent claim may nonetheless be found to infringe if there is ‘equivalence’ between the elements of the accused product or process and the claimed elements of the patented invention.” Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17, 21 (1997); see also Deputy Spine, Inc. v. Medtronic Sofamor Danek, Inc., 469 F.3d 1005, 1016 (Fed. Cir. 2006). Equivalence is found where there are “insubstantial” differences between the elements of the accused product or process and the elements of the patent claims, as determined by one of ordinary skill in the art. Eagle Comtronics, Inc. v. Arrow Commun. Labs., Inc., 305 F.3d 1303, 1315 (Fed. Cir. 2002). Intent plays no role in the application of the doctrine of equivalents. Warner-Jenkinson, 520 U.S. at 36. “The proper time for evaluating equivalence . . . is at the time of infringement, not at the time that the patent was issued.” Id. at 37.

“The doctrine of equivalents might come into play to determine infringement of a means-plus-function claim element if the accused device features technology that has arisen since the time of patent issuance.” Ishida Co. v. Taylor, 221 F.3d 1310, 1317 (Fed. Cir. 2000). In that instance, the doctrine of equivalents reduces to whether or not there is an “insubstantial difference” between the limitation’s corresponding structure and any after-invented technology found in the infringing device. Id.

5. Willful Infringement

Willfulness is a question of fact. Golden Blount, Inc. v. Robert H. Peterson Co., 438 F.3d 1354, 1367-8 (Fed. Cir. 2006). Proof of willful infringement requires “at least a showing of objective recklessness.” In re Seagate Tech., LLC, 497 F.3d 1360, 1371 (Fed. Cir. 2007). To establish objective recklessness, “a patentee must show by clear and convincing evidence that the infringer acted despite an objectively high likelihood that its actions constituted infringement of invalid patent.” Id. “The state of mind of the accused infringer is not relevant to this objective inquiry.” Id.

If the patentee meets this objective requirement, the patentee must also demonstrate that the objectively high risk was “either known or so obvious that it should have been known to the accused infringer.” Id.

B. Remedies

1. Damages

In relevant part, 35 U.S.C. § 284 provides:

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

Under Section 284, upon a finding of infringement, NICE is entitled to recover damages “adequate to compensate for the infringement.” 35 U.S.C. § 284. Moreover, the statute guarantees that a reasonable royalty is the floor below which damages for infringement may not fall. Riles v. Shell Exploration & Prod. Co., 298 F.3d 1302, 1313 (Fed. Cir. 2002).

NICE may recover for infringement of its patents regardless of the type of harm that results from the infringement. See King Instruments Corp. v. Perego, 65 F.3d 941, 947 (Fed. Cir. 1995). Damages may be awarded for any injury as long as it resulted from

infringement. Id. Congress sought to ensure that the patent owner would in fact receive full, compensation for any damages he suffered as a result of the infringement. Id. at 948.

NICE bears the burden of proving the amount of damages by a preponderance of the evidence. See Union Carbide Chems. & Plastics Tech. Corp. v. Shell Oil Co., 425 F.3d 1366, 1372 (Fed. Cir. 2005) (noting that “the amount of a prevailing party’s damages is a finding of fact on which the plaintiff bears the burden of proof by a preponderance of the evidence”). The determination of a damage award “is not an exact science, and the methodology of assessing and computing damages is committed to the sound discretion of the district court.” Ferguson Beauregard/Logic Controls, Division of Dover Res, Inc. v. Mega Systems, LLC, 350 F.3d 1327, 1345 (Fed. Cir. 2003). If “the amount of damages cannot be ascertained with precision, any doubts regarding the amount must be resolved against the infringer.” Wechsler v. Macke Int’l Trade, Inc., 486 F.3d 1286, 1299 (Fed. Cir. 2007) (internal citation omitted).

An award of damages may be split between lost profits as actual damages to the extent that they are proven and a reasonable royalty for the remainder. See, e.g., Crystal Semiconductor Corp. v. Tritech Microelectronics Int’l, 246 F.3d 1336 (Fed. Cir. 2001).

The court may use the entire market value rule when calculating damages. See Bose Corp. v. JBL, Inc., 274 F.3d 1354, 1361 (Fed. Cir. 2001). This approach allows courts to base the recovery of damages on the value of the patentee’s entire apparatus, even though only one feature is patented. See id.

a. Lost Profits

NICE may recover lost profit damages if there is a reasonable probability that “but for” the infringement, it would have made Witness’ sales. Micro Chem. v. Lextron, Inc., 318 F.3d 1119, 1122 (Fed. Cir. 2003). That is, NICE must show “a causal relation between the infringement and its loss of profits.” See Crystal Semiconductor Corp. v. Tritech

Microelectronics Intl', Inc., 246 F.3d 1336, 1353 (Fed. Cir. 2001). The burden of proving lost profit damages rests on NICE. See id. at 1353-54. NICE, however, need not negate all possibilities that a purchaser might have bought a different product or might have foregone the purchase altogether. State Indus., Inc. v. Mor-Flo Indus., Inc., 883 F.2d 1573, 1577 (Fed. Cir. 1989). Rather, NICE need show only that there is a "reasonable probability" of its entitlement to the lost profits "but" for the infringement. Micro Chem., 318 F.3d at 1122. Any doubts concerning the computation of NICE's lost profits "must be resolved against the infringer." Wechsler v. Macke Int'l Trade, Inc., 486 F.3d 1286, 1299 (Fed. Cir. 2007).

A four-part test, first articulated in Panduit Corp. v. Stahl Bros. Fibre Works, Inc., 575 F.2d 1152 (6th Cir. 1978), is commonly used to determine whether lost profit damages are appropriate. Golden Blount, Inc. v. Robert H. Peterson Co., 438 F.3d 1354, 1371 (Fed. Cir. 2006). The Federal Circuit has described this test as a "useful, but non-exclusive, way for a patentee to prove entitlement to lost profits." Tate Access Floors v. Maxcess Techs., 222 F.3d 958, 971 (Fed. Cir. 2000). Under the Panduit test, NICE must show: (1) demand for its products, (2) absence of acceptable non-infringing substitutes, (3) manufacturing and marketing capability to exploit the demand, and (4) the amount of the profit it would have made. Id. at 1371-72.

(1) Demand for the patented product can be proved by significant sales of NICE's products or by significant sales of the accused infringer's infringing products. See Gyromat Corp. v. Champion Spark Plug, Co., 735 F.2d 549, 555 (Fed. Cir. 1984).

(2) An acceptable non-infringing substitute has all the advantages of the patented product. See Stryker Corp. v. Intermedics Orthopedics, Inc., 96 F.3d 1409, 1418 (Fed. Cir. 1996). The mere existence of a non-infringing device does not necessarily make the device an

acceptable substitute to the patented device. A competing product which lacks the advantages of the patented product is not a substitute that is acceptable to a customer who wants those advantages. Thus, if customers are motivated to purchase because of particular features available only from the patented product, products without those features, even if otherwise competing in the marketplace, are not acceptable non-infringing substitutes. See Tate Access Floors v. Maxcess Techs., 222 F.3d 958, 971 (Fed. Cir. 2000); Standard Havens Prods., Inc. v. Gencor Indust., Inc., 935 F.2d 1360, 1373 (Fed. Cir. 1991). The test is whether there were non-infringing substitutes acceptable to the actual purchasers of the accused infringer's infringing products. Standard Havens, 935 F.2d at 1373.

(3) NICE must prove that it would have had the ability to manufacture and the capability to sell the amount of product for which it is now claiming lost profits. See Gyromat, 735 F.2d at 554.

(4) Lost profit on lost sales may be calculated using the incremental income approach. See Paper Converting Mach. Co. v. Magna-Graphics Corp., 745 F.2d 11, 22 (Fed. Cir. 1984). This calculation is performed by computing the lost net sales for its patented product and deducting from that figure the amount of additional costs that it would have incurred making those sales. Id. Certain fixed costs such as property taxes, insurance, rent and administrative overhead, may not vary with increases in production or sales. Id. Any such costs which do not vary with increased production or sales should not be considered when determining damages. Id.

In addition to actual lost profits, NICE may also recover projected future lost profits. See Oiness v. Walgreen Co., 88 F.3d 1025, 1031 (Fed. Cir. 1996). Although future lost profit

calculations necessarily contain speculative elements, a patentee may nonetheless recover estimated future losses that are based on sound economic models and not guesswork. Id.

Lost profits as a result of price erosion are compensable damages that stand on the same ground as damages caused by lost sales. See Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, 246 F.3d 1336, 1360 (Fed. Cir. 2001). To establish price erosion damages, NICE must show that but for infringement, it would have been able to charge higher prices. Id. at 1357. NICE must also present evidence of the “amount of product the [it] would have sold at the higher price”. Id. Price erosion, though it cannot be based on pure speculation, “need not be proven with unerring precision” either. Del Mar Avionics, Inc. v. Quinton Instrument, Co., 836 F.2d 1320, 1327 (Fed. Cir. 1987).

b. Reasonable Royalty

NICE may receive a reasonable royalty for any of the infringer’s sales not included in the lost profits calculation. Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, 246 F.3d 1336, 1354 (Fed. Cir. 2001). “Calculation of a reasonable royalty depends on the particular facts of each case.” Mahurkar v. C.R. Bard, Inc., 79 F.3d 1572, 1579 (Fed. Cir. 1996).

In the absence of an established royalty, a “reasonable royalty” is calculated based on “the amount of money that would be agreed to in a hypothetical arms length negotiation taking place at the time infringement began between the owner of the patent rights and the infringer, with both operating under the assumption that the negotiated patent is not invalid or infringed.” Johns Hopkins Univ. v. Cellpro, 894 F. Supp. 819, 838 (D. Del. 1995); see also Applied Med. Res. Corp. v. United States Surgical Corp., 435 F.3d 1356, 1361 (Fed. Cir. 2006).

Factors which may be considered when determining the reasonable royalty include:

a. the royalties received by the patentee for the licensing of others under the patent in suit and the rates paid by the licensees for the use of other patents comparable to the patent in suit;

b. the nature and scope of the license, as exclusive or non-exclusive, or as restricted or non-restricted in terms of territory or with respect to whom the manufactured product may be sold;

c. the licensor's established policy and marketing program to maintain its patent exclusivity by not licensing others to use the invention or by granting licenses under special conditions designed to preserve exclusivity;

d. the commercial relationship between the licensor and licensee, such as whether they are competitors in the same territory in the same line of business, or whether they are inventors or promoters;

e. the effect of selling the patented specialty in promoting sales of other products of the licensee, the existing value of the invention to the licensor as a generator of sales of its non-patented items, and the extent of such derivative or convoyed sales;

f. the duration of the patent and the term of licenses;

g. the established profitability of the product made under the patent, its commercial success, and its current popularity;

h. the utility and advantages of the patent property over the old modes or devices, if any, that had been used for working out similar results;

i. the nature of the patented invention, the character of the commercial embodiment of it as owned and produced by the licensor, and the benefits to those who have used the invention;

j. the extent to which the infringer has made use of the invention, and any evidence probative of the value of that use;

k. the portion of the profit or of the selling price that may be customary in the particular business or in comparable business to allow for the use of the invention or analogous inventions;

l. the portion of the realizable profit that should be credited to the invention as distinguished from non-patented elements, the manufacturing process, business risks, or significant features or improvements added by the infringer;

m. the opinion testimony of qualified experts; and

n. any other economic factor that a normally prudent businessman would, under similar circumstances, take into consideration in negotiating the hypothetical license.

See, e.g., Maxwell v. J. Baker, Inc., 86 F.3d 1098, 1109 (Fed. Cir. 1996); Rite-Hite Corp. v. Kelley Co., 56 F.3d 1538, 1554-55 (Fed. Cir. 1995) (en bane); Johns Hopkins, 894 F. Supp. at 838 (D.Del. 1995); Georgia Pac. Corp. v. United States Plywood Corp., 318 F. Supp. 116, 1120 (S.D.N.Y. 1970). Licenses relating to products entirely distinct from NICE's patented products are insufficient to establish an industry standard of what is a reasonable royalty. See Railroad Dynamics, Inc. v. A. Stucki Co., 727 F.2d 1506, 1518 (Fed. Cir. 1991).

A reasonable royalty may be a lump sum amount, based on evidence supporting that amount, or a running royalty. See Interactive Pictures Corp. v. Infinite Pictures, Inc., 274 F.3d 1371, 1384 (Fed. Cir. 2001); Stickle v. Heulein, 716 F.2d 1550, 1563 (Fed. Cir. 1983). A reasonable royalty may also be higher than the infringer's net profits on its sales of the infringing products. See Golight. Inc. v. Wal-Mart Stores, Inc., 355 F.3d 1327, 1338 (Fed. Cir. 2004).

The accused infringer, Witness, bears the burden of keeping records necessary to compute a royalty award. See Beatrice Foods Co. v. New England Printing & Lithographing Co., 923 F.2d 1576, 1579 (Fed. Cir. 1991). If Witness fails to keep complete and accurate records, such that a court is prevented from accurately determining the number of infringing units involved, any uncertainty must be resolved against the infringer. See id.

c. Prejudgment Interest

A court must award prejudgment interest to afford NICE full compensation for infringement, “absent some justification for withholding such award.” In re Seagate Tech., LLC, 497 F.3d 1360, 1380 (Fed. Cir. 2007). Prejudgment interest, however, can only be applied to the actual damage portion and not to the enhanced portion. See Underwater Devices, Inc. v. Morrison Knudsen Co., 717 F.2d 1380, 1389 (Fed. Cir. 1983).

The court has the discretion to fix the interest rate and select an award at the prime rate. See Lam, Inc. v. Johns-Manville Corp., 718 F.2d 1056, 1066 (Fed. Cir. 1983). The district court may also fix the interest at a higher rate if the patentee has affirmatively demonstrated that a higher rate should be used. Id. The determination whether to award simple or compound interest is within the discretion of the court. See Rite-Hite Corp. v. Kelley Co., 56 F.3d 1538, 1555 (Fed. Cir. 1995). Prejudgment interest should be computed from the date of infringement to the date of judgment. See Nickson Indus., Inc v. Rol Mfg. Co., Ltd., 847 F.2d 795, 800-01 (Fed. Cir. 1988).

d. Increased Damages

A district court may increase actual compensatory damages by up to three times upon a finding of willful infringement. See 35 U.S.C. § 284 (2007); see also In re Seagate Tech., LLC, 497 F.3d 1360, 1368 & n.3 (Fed. Cir. 2007). The Federal Circuit has interpreted the increased damages portion of the statute as requiring a two step process. See Jurgens v. CBK, Ltd., 80

F.3d 1566, 1571-72 (Fed. Cir. 1996). First, the fact-finder must determine whether an infringer willfully infringed the patent. Id. Upon a finding of willfulness, the Court then determines whether, and to what extent, to increase the damages award, given the totality of the circumstances. See id.

Under the second element of the increased damages inquiry, the court determines the extent to increase the damage award based on the egregiousness of the defendant's conduct based on all the facts and circumstances of the case. Id. The Federal Circuit has identified a number of factors which may be considered in determining the egregiousness of the infringer's conduct. These factors include:

- (1) evidence whether the infringer deliberately copied the ideas or designs of the patentee;
- (2) evidence whether the infringer, when he knew of the other's patent, investigated the scope of the patent and formed a good-faith belief that it was invalid or that it was not infringed;
- (3) evidence of the infringer's behavior as a party to the litigation;
- (4) evidence of the infringer's size and financial condition;
- (5) evidence as to the closeness of the case;
- (6) evidence regarding the duration of the infringer's conduct;
- (7) evidence showing remedial action by the defendant;
- (8) evidence regarding the defendant's motivation for harm; and
- (9) evidence as to whether the defendant attempted to conceal its misconduct.

See GNB Battery Tech, Inc. v. Exide Corp., 886 F. Supp. 420, 440-442 (D. Del. 1995) (citing) Read Corp. v. Portec, Inc., 970 F.2d 816, 826-29 (Fed. Cir. 1992) aff'd 78 F.3d 605 (Fed. Cir. 1996); Thorn EMI North Am., Inc. v. Micron Tech., Inc., 837 F. Supp. 616, 620 (D. Del. 1993).

Treble damages may be awarded to NICE upon a finding that Witness' infringement was willful. See Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v. Dana Corp., 383 F.3d 1337, 1342 (Fed. Cir. 2004).

e. Exceptional Case - Attorneys' Fees

A district court may also award attorneys' fees to the prevailing party in exceptional cases. 35 U.S.C. § 285 (2007); Fort James Corp. v. Solo Cup Co., 412 F.3d 1340 n.3 (Fed. Cir. 2005). "The criteria' for declaring a case exceptional include willful infringement, misconduct and unprofessional behavior." Imonex Servs. v. W.H. Munzprufer Dietmar Trenner GmbH, 408 F.3d 1374; 1378 (Fed. Cir. 2005). The court has broad discretion in the criteria it uses to determine whether to award attorney fees. Id.

2. Injunctive Relief

The patent statute provides that courts may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by a patent, on such terms as the court deems just. 35 U.S.C. § 283. "According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief." eBay Inc. v. MercExchange, L.L.C., 126 S. Ct. 1837, 1839 (2006). To get an injunction, the plaintiff must show: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." Id. Irreparable injury can arise from circumstances such as "irreversible

price erosion, loss of good will, [and] potential lay-offs of [the patent holder's] employees.”

Sanofi-Synthelabo v. Apotex, Inc., 470 F.3d 1368, 1381 (Fed. Cir. 2006).

II. ISSUES ON WHICH WITNESS BEARS THE BURDEN OF PROOF AT TRIAL

A. Validity

In relevant part, 35 U.S.C. § 282 states:

A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim . . . The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.

A party challenging a patent's validity “bears the burden of proving the factual elements of invalidity by clear and convincing evidence.” Pfizer, Inc. v. Apotex, Inc., 480 F.3d 1348, 1359 (Fed. Cir. 2007); see also BOC Health Care, Inc. v. Nellcor, Inc., 892 F. Supp. 598, 602 (D. Del. 1995). Clear and convincing evidence has been described as evidence which proves in the mind of the trier of fact “an abiding conviction that the truth of [the] factual contentions are highly probable.” Intel Corp. v. U.S. Intern. Trade Com’n, 946 F.2d 821, 830 (Fed. Cir. 1991).

“The burden of persuasion is and always rests upon the party asserting invalidity.” Magnivision, Inc. v. The Bonneau Co., 115 F.3d 956, 957 (Fed. Cir. 1997). “That burden of proof never shifts to the patentee to prove validity.” Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 1375 (Fed. Cir. 1986). The presumption of validity is never weakened. ACS Hosp. Sys., Inc. v. Montefiore Hospital, 732 F.2d 1572, 1574-75 (Fed. Cir. 1984).

Deference is due to the Patent Office, which is a “qualified government agency presumed to have properly done its job, which includes one or more examiners who are assumed to have some expertise in interpreting the references and to be familiar from their work with the level of skill in the art and whose duty it is to issue only valid patents.” American Hoist & Derrick Co. v.

Sowa & Sons, 725 F.2d 1350, 1358 (Fed. Cir. 1984), cert. denied, 496 U.S. 821 (1984); see also McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1353 (Fed. Cir. 2001); Ultra-Tex Surfaces, Inc. v. Hill Bros. Chem. Co., 204 F.3d 1360, 1367 (Fed. Cir. 2000).

The burden of proving invalidity is heightened when the accused infringer attempts to rely on prior art that was before the examiner of the Patent and Trademark Office during prosecution of the patent at issue. Am. Hoist & Derrick Co. v. Sowa & Sons, Inc., 725 F.2d 1350, 1360 (Fed. Cir. 1984). When the prior art was already before the examiner during prosecution of the patent and the examiner granted the patent, part of the accused infringer's burden is to show the examiner was wrong in his/her decision to grant the patent. See Glaxo Group Ltd. v. Apotex, Inc., 376 F.3d 1339, 1348 (Fed. Cir. 2004).

1. Anticipation

Pursuant to 35 U.S.C. § 102, an invention lacks novelty, or is statutorily barred, if it is "anticipated" by the prior art. An invention is anticipated if it is described or disclosed in a single prior art reference which falls under one or more of the categories set forth in 35 U.S.C. 102 (a)-(g). See Perricone v. Medicis Pharm. Corp., 432 F.3d 1368, 1375 (Fed. Cir. 2005). "Anticipation is a question of fact." Eli Lilly & Co. v. Zenith Goldline Pharms., Inc., 471 F.3d 1369, 1375 (Fed. Cir. 2006). "To anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter." PPG Indus., Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566 (Fed. Cir. 1996); see also Elan Pharms., Inc. v. Mayo Found., 346 F.3d 1051, 1054 (Fed. Cir. 2003). Before any publication can amount to a statutory bar to the grant of a patent, its disclosure must be such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. In re Legrice, 301 F.2d 929, 936 (C.C.P.A. 1962); see also In re Elsner, 381 F.3d 1125, 1128 (Fed. Cir. 2004). To be anticipating, a prior art reference must

describe the claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention. Helifix Ltd. v. Blok-Lok, Ltd., 208 F.3d 1339, 1346 (Fed. Cir. 2000). That is, a prior art disclosure must “be enabling, such that one of ordinary skill in the art could practice the invention without undue experimentation.” Novo Nordisk Pharm., Inc. v. Bio-Technology Gen. Corp., 424 F.3d 1347, 1355 (Fed. Cir. 2005).

Under 35 U.S.C. §102(b), a person is not entitled to a patent if the invention was on sale in this country more than one year prior to the date of the application for the patent in the United States. “An accused infringer, challenging a presumptively valid patent must demonstrate by clear and convincing evidence that there was a definite sale or offer to sell more than one year before the application for the subject patent, and that the subject matter of the sale or offer to sell fully anticipated the claimed invention.” Group One, Ltd. v. Hallmark Cards, Inc., 254 F.3d 1041, 1045. A commercial offer for sale occurs when an offer can be accepted in order to make a binding contract. Id. Determining if a commercial offer has been made requires looking closely at the language in the proposal itself and the interactions between the parties. See Id. at 1045-1048.

2. Obviousness

In relevant part, 35 U.S.C. § 103 states:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title [35 U.S.C. § 102], if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

“The test for obviousness focuses on how one skilled in the art would view the prior art at the time of the invention.” GNB Battery Tech, Inc. v. Exide Corp., 886 F. Supp. 420, 440-442 (D. Del. 1995).

While the ultimate judgment of obviousness is a legal determination, that determination is necessarily based on underlying factual inquiries. Winner Int'l Royalty Corp. v. Wang, 202 F.3d 1340, 1348 (Fed. Cir. 2000). The underlying factual inquiries in an obviousness analysis include:

- (1) the scope and content of the prior art
- (2) the level of ordinary skill in the prior art
- (3) the differences between the claimed invention and the prior art; and
- (4) objective evidence of nonobviousness.

See KSR Intern. Co. v. Teleflex Inc., 127 S. Ct. 1727, 1734 (2007).

Secondary considerations, such as commercial success, long felt but unsolved needs, and the failure of others may also be utilized in the obviousness analysis “to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” Id. “The commercial response to an invention is significant to determinations of obviousness, and is entitled to fair weight.” Biacore v. Thermo Bioanalysis Corp., 79 F. Supp 422, 465 (D. Del. 1999).

In addition, the obviousness analysis must include “interrelated teachings of multiple patents; the effect of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” KSR., 127 S. Ct. at 1740-41.

Invalidity based on obviousness of a duly issued patent must be established by clear and convincing evidence. Glaverbel Societe Anonyme v. Northlake Marketing, 45 F.3d 1550, 1555 (Fed. Cir. 1995).

“35 U.S.C. 103 requires that obviousness be determined with respect to the invention as a whole. This is essential for combination inventions, for generally all combinations are of known elements.” Interconnect Planning Corp. v. Feil, 774 F. 2d 1132, 1143 (Fed. Cir. 1985). An invention composed of several elements is not obvious simply because each of the claimed elements was, independently, known in the prior art. KSR, 127 S. Ct. at 1741.

EXHIBIT NO. 5 TO THE JOINT PRE-TRIAL ORDER

Witness Systems' Statement of Issues of Law

To the extent that any issues of fact set forth in Exhibit No. 3 of the Joint Pre-Trial Order may be considered issues of law, Witness Systems hereby incorporates those portions of Exhibit No. 3 herein by reference. The authority cited in this exhibit is not meant to be an exhaustive list. Witness Systems reserves the right to cite additional authority if necessary, including but not limited to authority cited in the proposed jury instructions.

A. Validity of NICE's Patents

1. Whether the asserted claims of U.S. Patent No. U.S. Patent No. 6,249,570, U.S. Patent No. 6,728,345, U.S. Patent No. 6,775,372, U.S. Patent No. 7,010,109, U.S. Patent No. 6,870,920, and U.S. Patent No. 5,396,371 (collectively the "patents in suit") are invalid under 35 U.S.C. § 102, 103 as anticipated or obvious in light of the prior art. Authority:

- 35 U.S.C. § 102, 103
- *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (Apr. 30, 2007)
- *Graham v. John Deere Co.*, 383 U.S. 1 (1966)
- *Apotex U.S.A., Inc. v. Merck & Co.*, 254 F.3d 1031, 1035 (Fed. Cir. 2001)

2. Whether the patents in suit are invalid because the prior art shows others invented the invention before NICE did. Authority:

- *Mycogen Plant Sci., Inc. v. Monsanto Co.*, 252 F.3d 1306 (Fed. Cir. 2001)
- *Loral Fairchild Corp. v. Matsushita Elec. Indus. Co.*, 266 F.3d 1358, 1363 (Fed. Cir. 2001)
- *Mahurkar v. C.R. Bard, Inc.*, 79 F.3d 1572 (Fed. Cir. 1996).

B. Enforceability of Patents

1. Whether U.S. Patent No. 5,396,371 is invalid and unenforceable because the patentee committed inequitable conduct. Authority:

- *Digital Control Inc. v. Charles Machine Works*, 437 F.3d 1309 (Fed. Cir. 2006)

- *Ferring B.V. v. Barr Laboratories, Inc.*, 437 F.3d 1181 (Fed. Cir. 2006)

2. Whether the patents in suit are unenforceable because of laches. Authority:

- *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020 (Fed. Cir. 1992) (en banc)
- *Gasser Chair Co. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770 (Fed. Cir. 1995)

3. Whether the patents in suit are unenforceable because of equitable estoppel.

Authority:

- *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020 (Fed. Cir. 1992) (en banc)
- *Gasser Chair Co. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770 (Fed. Cir. 1995)

4. Whether the patents in suit are unenforceable due to unclean hands. Authority:

- *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806 (1945)
- *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240 (1933)
- *Consolidated Aluminum Corp. v. Foseco Intern. Ltd.*, 910 F.2d 804 (Fed. Cir. 1990)

C. Declaratory Judgments

1. Whether Witness Systems is entitled to declaratory judgment of invalidity on the patents in suit. Authority:

- 28 U.S.C. § 2201
- See cases cited above in invalidity section

2. Whether Witness Systems is entitled to declaratory judgment on noninfringement of the patents in suit: Authority:

- 28 U.S.C. § 2201
- See cases cited below in noninfringement section

D. Noninfringement

1. Whether the Accused Products do not literally infringe the patents in suit. Authority

- 35 U.S.C. § 271
- *Netword, LLC v. Centraal Corp.*, 242 F.3d 1347 (Fed. Cir. 2001)
- *Wenger Mfg., Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225 (Fed. Cir. 2001)

- *Cole v. Kimberly-Clark Corp.*, 102 F.3d 524 (Fed. Cir. 1996).

2. Whether the Accused Products do not infringe the patents in suit under the doctrine of equivalents. Authority:

- *Warner-Jenkinson Co., Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17 (1997)
- *Johnson & Johnson Assoc. v. R.E. Service Co.*, 285 F.3d 1046 (Fed. Cir. 2002) (en banc)

3. Whether NICE is prohibited from using the doctrine of equivalents to show infringement of the asserted claims because of prosecution history estoppel. Authority:

- *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 344 F.3d 1359 (Fed. Cir. 2003) (en banc)

4. Whether Witness Systems actively induced infringement of a valid patent. Authority:

- 35 U.S.C. § 271
- *Ferguson Beauregard/Logic Controls, Division of Dover Resources, Inc. v. Mega Systems, LLC*, 350 F.3d 1327 (Fed. Cir. 2003)
- *Warner-Lambert Co. v. Apotex Corp.*, 316 F.3d 1348 (Fed. Cir. 2003)

5. Whether Witness Systems committed contributory infringement of a valid patent. Authority:

- 35 U.S.C. § 271
- *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U.S. 476 (1964)
- *Mentor H/S, Inc. v. Med. Device Alliance, Inc.*, 244 F.3d 1365 (Fed. Cir. 2001)
- *Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 909 F.2d 1464, 1469 (Fed. Cir. 1990)

6. Whether Witness Systems' conduct rises to the level of willful infringement. Authority:

- *Safeco Ins. Co. of Am. v. Burr*, 127 S. Ct. 2201 (2007)
- *In re Seagate Tech., LLC*, 497 F.3d 1360 (Fed. Cir. 2007)

E. NICE Damages

1. Whether NICE is entitled to any relief requested, including but not limited to prejudgment interest, attorney fees, damages, enhanced damages, and injunctive relief.

Authority:

- *eBay Inc v. MercExchange, L.L.C.*, 126 S. Ct. 1837 (2006)

- *Golight, Inc., v. Wal-Mart Stores, Inc.*, 355 F.3d 1327 (Fed. Cir. 2004)
- *Grain Processing Corp. v. American Maize-Prod. Co.*, 185 F.3d 1341 (Fed. Cir. 1999)
- *Panduit Corp. v. Stahl Bros. Fibre Works, Inc.*, 575 F.2d 1152 (6th Cir. 1978)
- *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970)

2. Whether and when NICE adequately marked its products. Authority:

- 35 U.S.C. § 287
- *Nike Inc. v. Wal-Mart Stores*, 138 F.3d 1437 (Fed. Cir. 1998)

F. Witness Systems Damages

1. Whether this case is an exceptional case under 35 U.S.C. § 285 and that NICE be required to pay costs of suit that Witness Systems has incurred, including attorneys fees and costs. Authority:

- 35 U.S.C. § 285

United States District Court

DISTRICT OF DELAWARE

NICE's TRIAL EXHIBIT LIST
NICE Systems, Inc. et al. v. Witness Systems, Inc.
CASE NUMBER: 06-311-JFF

PRESIDING JUDGE Judge Joseph J. Farnan, Jr.	PLAINTIFF'S ATTORNEY Melanie K. Sharp, Esq. Young Conaway Stargatt & Taylor, LLP Scott Lindvall, Esq. Kave Scholer LLP	DEFENDANT'S ATTORNEY Nagendra Setty, Esq. Fish & Richardson P.C.
TRIAL DATE(S) January 14, 2008	COURT REPORTER	COURTROOM DEPUTY

EX. NO.	DATE OFFERED	MARKED	ADMITTED	DEP. EX. NO.	NICE TRIAL EX. NO.	DESCRIPTION OF EXHIBITS	OBJECTION	BASIS FOR ADMISSION (FRE)
1				Nice - P006; Nice - SwickD005; Nice - DalyD009; Nice - HenitsD043; Nice - HenitsD005; Nice - D002		United States Patent Number 5,396,371 (Henits) - Endless Loop Voice Data Storage and Retrievable Apparatus and Method Thereof, dated 03/07/1995		
2						United States Patent Number 5,396,371 - Application File History # 08/171,296, dated 12/21/1993 (NSDE 715633-742)		
3				Nice - P008; Nice - D004; Nice - DalyD002; Nice - MorlandoD010; Nice - SwickD006; Nice - HenitsD044; Nice - HenitsD024; Nice - RodenD016		United States Patent Number 5,819,005 (Daly) - Modular Digital Recording Logger, dated 10/6/1998 (WSNSDE0008925-8932) &(V001192-99)		
4						United States Patent Number 5,819,005 - Application File History # 08/623,671, dated 3/29/1996 (WSNSDE 0008700-8924)		

5						United States Patent Number 5,819,005 - Continuation of Application File History # 08/100,944, dated 6/3/1993 (NSDE 715743-857)		
6				Nice - P009; Nice - HenitsD056; Nice - GlownyD004; Nice - RichterD006		United States Patent Number 6,249,570 (Glowny) - System and Method for Recording and Storing Telephone Call Information, dated 6/19/2001 (WSNSDE0009192-254 & DICT 000064-126)		
7						United States Patent Number 6,249,570 - Application File History # 09/328,299, dated 6/8/1999 (WSNSDE 0008933-9191)		
8				Nice - P010; Nice - Richter - D008		United States Patent Number 6,728,345 B2 (Glowny) - System and Method for Recording and Storing Telephone Call Information Retained, dated 4/27/2004		
9						United States Patent Number 6,728,345 - Application File History # 09/876,979, dated 6/8/2001 (NSDE 715858-716093)		
10				Nice - HenitsD053; Nice - RodenD015		United States Patent Number: 6,775,372 B1 Henits - System and Method for Multi-stage Data Logging, dated 8/10/2004 (WSNSDE0009798-813) & (V001328-343)		
11				Nice - P011; Nice - HenitsD026; Nice - HenitsD053		United States Patent Number 6,775,372 B2 (Henits) - System and Method for Multi-stage Data Logging, dated 8/10/2004 (WSNSDE0009798-813)		
12						U.S. Patent 6,775,372 B1 - Application File History # 09/324,459 (NSDE 716094-332)		
13				Nice - P012; Nice - RichterD007		United States Patent Number 6,785,370 B2 (Glowny) - System and Method for Integrating Call Record Information, dated 8/31/2004 (WSNSDE0010104-168)		
14						United States Patent Number 6,785,370 B2 - Application File History # 09/876,958, dated 6/8/2001 (WSNSDE 0009814-10103)		

15				Nice - P013; Nice - HenitsD028		United States Patent Number 6,870,920 B2 (Henits) - System and Method for Multi-stage Data Logging; dated 3/22/2005 (WSNSDE0010348-363)		
16						United States Patent Number 6,870,920 - Application File History # 10/187,865, dated 7/2/2002 (WSNSDE 0010169-10347)		
17				Nice - P015		United States Patent Number 7,010,109 (Gritzer) - Digital Recording of IP Based Distributed Switching Platform, dated 3/7/2006		
18						United States Patent Number 7,010,109 - Provisional Application No.: 60/228,124, dated 8/28/2000 (WSNSDE 0051300-322)		
19						United States Patent Number 7,010,109 - Application File History # 10/906,962, dated 3/14/2005 (NSDE 716333-490)		
20				EvansD101		Employee Hierarchy Chart (WSDE PROD 0245696-702)		
21				EvansD102		Form entitled 8K Verint Systems, Inc.		
22				EvansD113; EvansD115		Document (WSNB 010739-744)	401, 402, 403	
23				EvansD114		Document (WSNB 010745-750)	401, 402, 403	
24				EvansD119		Document (WSNB 013055 -059)	401, 402, 403	
25				EvansD120		Document (WSNB 013060-064)	401, 402, 403	
26				EvansD121		Document (WSNB 013065-069)	401, 402, 403	
27				EvansD122		Document (WSNB 013070-080)	401, 402, 403	
28				EvansD123		Key Performance Metrics (WSNB0260568-577)		
29				EvansD124		Document (WSNB 004363-389)	401, 402, 403	
30				EvansD125		Document (WSNB 004390-4416)	401, 402, 403	
31				EvansD126		Document (WSNB 004417-443)	401, 402, 403	
32				EvansD127		Document (WSNB 004444-470)	401, 402, 403	

33				EvansD128		Document (WSNB 004471-484)	401, 402, 403	
34				EvansD129		Document (WSNB 004485 -498)	401, 402, 403	
35				EvansD130		Document (WSNB 010047)	401, 402, 403	
36				EvansD132		Document (WSDEPROD 0101252-255)		
37				EvansD133		Document (WSDEPROD 3082418-419)		
38				EvansD134		Document (WSDE PROD 3081879-883)		
39				EvansD135		Document (WSDEPROD 3081863-867)		
40				Nice - DalyD006		Objectives, Daniel F. Daly , dated 00/00/1993 (NSDE 266948-956)		
41				Nice - GlownyD013; Nice - HenitsD055		Dictaphone: DOS EQUIS - CTI Server Design Version 0.2, dated 7/9/1997 (NSDE 409563-584)		
42				Nice - GlownyD014		Da Vinci - Awards Document, One Page	401, 402, 403	
43				Nice - HenitsD045		Logger Architecture Assignment, dated 4/19/1991 (NSDE 097535-629)	106, 802*, 901, 1002	
44				Nice - HenitsD046		Monthly Progress Report, dated 2/00/1992 (NICE_DE_01137634-642)		
45				Nice - HenitsD047		Invention Disclosure, dated 6/10/1992 (NICE_DE_01137675-679)	802*, 901*	
46				Nice - HenitsD048		Modular Digital System, dated 4/21/1989 (NSDE 471405-423)		
47				Nice - HenitsD051		Invention Disclosure form, dated 6/10/1992 (NICE_DE_01137663-674)	802*, 901*	
48				Nice - HenitsD052		CRS Next Generation, dated 1/13/1997 (NSDE 6012514-536)		
49				Nice - HenitsD054		Low End Recording System 1000 System Requirements, dated 11/5/1997 (NSDE 294780-834)		
50				Nice - HenitsD061		Letter to J. Drayton from D. Kent re Interrogatory No. 14		
51				Nice - HenitsD063		LE Series Marketing Plan (NSDE 750318-373)		
52				Nice - HenitsD065		ContactCenterWorld.com: Dictaphone Freedom Recording System Named Product of the Year (NICE_DE_01140064-65)	401, 402, 403	
53				Nice - P023		Voice Over IP (VoIP Recording and Analysis) Dr. Chris Blair, Chief Technology Officer		

54				Nice - P024; Nice - P718		Declaration of Kevin Hegebarth in Support of Witness Systems Inc.'s Motion For Transfer (Filed June 29, 2006, NICE v. Witness, Civil Action Number 06-311 - JFF (D. Del.))		
55				Nice - P025		Witness Instructor's Guide - Compliance 7.7 (WSDEPROD0832664-995)		
56				Nice - P026		eQuality ContactStore (NSDE 000011-52)		
57				Nice - P027		Record/Replay Card top-Level Circuit Diagram	901	
58				Nice - P028		Eyretel the e-Ware Network Solution (WSNSDE0050001-71)		
59				Nice - P029		Eyretel Voice Recording System (WSNSDE0049744 -756)		
60				Nice - P030		Voice Over IP, (VoIP) Product Proposal Document (WSDEPROD5122120-142)		
61				Nice - P031		Eyretel Technical Note ETN340 for E.Ware Search Manager Sub-System (WSDEPROD1284294-327)		
62				Nice - P032		Witness V6 Architecture v E.Ware V6 Architecture (WSDEPROD1552021-29)		
63				Nice - P033		Analog/Digital E1, T1 Megalink and Max Card Position Configuration Diagram	901	
64				Nice - P034		Cable Layout, Mediastore, Micro MKII Analog	901	
65				Nice - P035		Analog Line Interface Card	901	
66				Nice - P036		Analog/Digital Mediastore Card Position Configuration Diagram	901	
67				Nice - P037		WLN, ContactStore / ContactStore PIUS Installation for Engineers (WSDEPROD0108294-8587)		
68				Nice - P038		WLN, Instructor Guide, Quality Monitoring, Server and System Administration, 7.7.0 (WSDEPROD3261279-1558)		
69				Nice - P039		NICE_DE_01128314-8578) Retained		
70				Nice - P040		Witness Contact Store for Communication Manger, Release 7.3 (NSDE 001501-167)		
71				Nice - P041		Instructor Guide Compliance Recorder 7.7 (WSDEPROD4475147-5249)		

72				Nice - P042		eQuality ContactStore Administration (WSDEPROD0103377-3618)		
73				Nice - P043		ContactStore for Communication Mangers, 7.1 for Engineers (WSDEPROD0107010-163)		
74				Nice - P044		Witness Systems Advanced WorkForce Optimization Proposal for Travelsphere via BT (WSDEPROD0840875-894)		
75				Nice - P045		Viewer User Guide, Release 7.7.1, dated July 2006 (WSDEPROD2474397-478)		
76				Nice - P046		PR-WJ-1004 Archive Support for Post Call Tagging, Supplementary Specifications, dated 10/28/2004		
77				Nice - P047		WOODY: Use Case UC-40014: Consolidate A Recording, dated 11/8/2004 (WSDEPROD3175762-766)		
78				Nice - P048		FreeDroopy Recorder, Use Case Model, dated 11/15/2005 (WSDEPROD2527621-666)		
79				Nice - P049		WOODY: White Paper/High Level Design PR-WY-1011: ContactStore IP high Availability topology Guidelines, dated 5/8/2005 (WSDEPROD1123255-314)		
80				Nice - P050		FreeDroopy Recorder Software Architecture Document, dated 11/16/2005 (WSDEPROD1126614-675)		
81				Nice - P051		ContactStore CSIP, dated 8/2/2005 (WSDEPROD1954542-576)		
82				Nice - P052		WOODY: PR-WY-1016 Mixed Protocol Support High Level Design Document, dated 2/1/2005		
83				Nice - P053		WOODY: Use Case UC-50014:Preprocess IP Packets, dated 10/12/2004 (WSDEPROD3177201-206)		
84				Nice - P054		WOODY: Supplementary Specifications, dated 10/11/2004 (WSDEPROD0579094-9101)		
85				Nice - P055;Nice - P702		Witness Systems Software Architecture dated 12/24/2004 Version 1.0 Author Duane Wright - System Architect Recording System, dated 12/24/2004 (WSDEPROD0579244-302)		
86				Nice - P056		Architecture Core Team - Eyretel As Is (WSDEPROD1122456-468)		

87				Nice - P057	Contact Store SRS (WSDEPROD0531359-419)		
88				Nice - P058	FreeDroopy RB-0025/36 Performance and Sizing Supplementary Specifications, dated 1/26/2006 (WSDEPROD1126864-891)		
89				Nice - P059	Cisco Technology Development Program Interoperability Verification Testing (IVT) Questionnaire for WS Impact360 Recorder with Cisco Unified CallManager 5.X(x) (WSDEPROD1127381-438)		
90				Nice - P060	Marketing Document		
91				Nice - P129	Project Picasso, Nortel Contact Recording & Quality Monitoring, v6.0.2, Vision (WSDEPROD0310086-98)		
92				Nice - P140	Notice of Deposition of Adtech- GSI, LLC		
93				Nice - P141	AGS Listens. Understands. Executes. (ADTECH000001-27)	802	
94				Nice - P145	Witness Systems Agreement, dated 1/28/2004 (ADTECH000160-178)	802	
95				Nice - P203	Letter to G. Wright (Senior VP of Blue Cross Blue Shield of Georgia) from G. Humphrey, dated 9/24/1998 (WSNSDE0047194- 195)		
96				Nice - P208	Letter to G. Humphrey from G. Wright re Eyretel Issues List, dated 9/10/1998 (WSNSDE0047196)		
97				Nice - P209	BlueCross BlueShield of Georgia - Eyretel Issue list (WSNSDE0047080-82)		
98				Nice - P210	Letter from Kent to Drayton re Interrogatory Number 14, dated 5/4/2007		
99				Nice - P233	Witness VoIP Solutions (WSDEPROD0310435-437)		
100				Nice - P234	Exhibit A - Witness Systems Enterprise Mid-Market Express and ContactStore Backsell Price List (WSNICE6800-814)		
101				Nice - P235	Witness - Form 8-K, dated 2/15/2007		
102				Nice - P236	Witness - Form PreM -14A, dated 3/14/2007		

103				Nice - P237		Marketing Document (WSDEPROD0101816-820)		
104				Nice - P238		Marketing Document (WSDEPROD0100641-645)		
105				Nice - P239		Marketing Document (WSDEPROD0101046-1051)		
106				Nice - P240		Witness ContactStore for Communication Manager, Last Updated 12-21-05, 3 Pages		
107				Nice - P241		Witness ContactStore for Communication Manager, Last Updated 3-27-06, 5 Pages (WITSDE 0002525-529)		
108				Nice - P242		Document Comparing Witness Systems to NICE Systems, 4 Pages (STS 023330-333)		
109				Nice - P243		Witness Systems Competitive Position v NICE Perform, dated 7/28/2006 (WITSDE 0002465- 473)		
110				Nice - P244		Competitor Playbooks about NICE Systems, dated 7/28/2006 (WITSDE 0002445-457)		
111				Nice - P245		Competitor Playbooks about NICE Systems, dated 3/27/2006 (WSISTS057858-869)		
112				Nice - P246		Competitor Playbooks about NICE Systems, dated 12/21/2005		
113				Nice - P247		Competitor Playbook about NICE Systems, dated 6/28/2005 (WITSDE 0067063-073)		
114				Nice - P248		NICE-Witness IP Comparison (WSDEPROD022103-104)		
115				Nice - P250		NICE-Witness Competitive Mid- Market Analysis (WSDEPROD0225620-624)		
116				Nice - P251		Witness-Eyretel Competitive Analysis (WSDEPROD0225116- 126)		
117				Nice - P252		NICE-Verint-eTalk Competitive Matrix Multi-media InterAction Recording Vendors (WITSDE 0002423-438)		
118				Nice - P253		Witness: Speech Recognition Competitive Analysis (WSNB003973-975)		
119				Nice - P254		Competitive Landscape (WSDEPROD0213744-758)		
120				Nice - P255		NICE - Competitive Analysis, dated 09/00/2001 (WSDEPROD0005367-380)		

121				Nice - P256		Competitive Landscape (WSDEPROD0213469-479)		
122				Nice - P257		E-mail String re Seed Questionings for your Briefing, dated 8/30/2004 (WSNB008401- 404)		
123				Nice - P258		immix Group: Technology RePresentation		
124				Nice - P259		Witness Systems Annual Report for 2000		
125				Nice - P700; Nice - P714		Technology Advisory Council : Meeting Minutes dated 6/6/2005 (WSDEPROD2458277-281)		
126				Nice - P701		Impact 360 Product Suite : Record & Replay System Architecture (WSDEPROD0536527-548)		
127				Nice - P703		Instructor Guide Compliance Recorder 7.7 Installation and Administration Course Module 1: Overview and Infrastructure (WSDEPROD2475147-250)		
128				Nice - P704		Witness ContactStore 7.7 for Avaya Communication Manager (CSCM) Technical Note: CSCM 7.7. for Quality Monitoring 7.7.1 (formerly eQuality Balance)		
129				Nice - P705		Impact 360 Architectural Roadmap - August 2006 (WSDEPROD1521018-1028)		
130				Nice - P706		7.8 Recorder - Secure Data in Transit with SSL- Software Architecture (WSDEPROD3182549-579)		
131				Nice - P709		Second Declaration of Kevin Hegebarth, dated 10/13/2004 (STS v Witness)		
132				Nice - P711		Agenda for Upcoming Technical Advisory Council, Conference Call - Week of March 21, 2005 (WSNB013949-951)	802	
133				Nice - P712		Technical Advisory Council Charter, dated 05/00/2005 (WSDEPROD2458323-325)		
134				Nice - P713		Technical Advisory Council Minutes, dated 6/6/2005 (WSNSDE061093-1101)		
135				Nice - P715		Technical Advisory Council Meeting Minutes, dated 7/21/2005 (WSDEPROD2458301-304)		

136				Nice - P716		Patent Status Update Presentation Made by Technical Advisory Council Meeting, dated 7/21/2005 (WSNB013977-991)		
137				Nice - P717		Technical Advisory Council, dated 10/20/2005 (WSNSDE061086-1092)		
138				Nice - P719		E-mail from Competitive HIT Committee, dated 6/18/2004 (WSDEPROD1540176-0176)		
139				Nice - P727; EvansD109		E-mail Chain from Discombe to Mr. Evans, dated 10/10/2005 (WSNB009900-902)	802	
140				Nice - P728; EvansD111		E-mail Chain from Ms. Patton to Sales & Marketing, dated 1/16/2006 (WSNB010250-253)	802	
141				Nice - P729		Witness Systems: Avaya Relationship Introduction (WSDEPROD0011200-217)		
142				Nice - RozenblatD007		DaVinci by Dictaphone Industry Awards 1998, dated 00/00/1998 (NICE_DE_00408245)	401, 402, 403	
143				Nice - RozenblatD008		Lost Opportunities 2006 ESI Chart, dated 00/00/2006 (NICE_DE_01136604-607)		
144				Nice - RudnickD016; Nice - RozenblatD006		United States Industry Awards, dated 6/13/2007 (NICE_DE_01138059-061)		
145				Nice - SwickD002		Group Objectives for 1991, dated 00/00/1991 (NSDE 119958-961)		
146				STS - Blair P013		Declaration of Christopher D. Blair, Ph.D., dated 5/26/2006		
147				STS - P003; Witness - D081		Avaya: Witness Contact Store and Witness Quality for Communication Manager (STS 002976-998)		
148				STS - P004; Witness - D077		Avaya: the Future of Call Recording in Converged Networks, dated 2/1/2004 (AVAYA012293-307)		
149				STS - P005		Avaya: Witness ContactStore for Communication Manager, Release 7.3, dated 9/1/2005 (STS 024158-324)		
150				STS - P009		Chart re Avaya & Witness Comparison	802*, 901*	
151				STS - P010		Software Development Agreement between Witness Systems and Blair Necessities, dated 12/4/2003 (WSISTS057891-934)		

152				STS - P011		Nortel Contact Recording, Product Overview, dated 7/5/2005 (WSISTS026004-6019)	401, 402, 403	
153				STS - P012		Nortel Call Recording and Quality Monitoring (WSISTS054796-803)	401, 402, 403	
154				STS - P013		Evolution of Voice Recording		
155				STS - P014		Application Note for the Witness Systems Compliance Package with Avaya Communication Manager and Avaya Application Enablement Services - Issue 1.0, dated 5/25/2006		
156				STS - P015		IP Capture Engine Design, Draft 1.0 (WSISTS007038-7056)		
157				STS - P016		Application Note for Eyretel IP Recording Suite, dated 1/23/2003 (STS 001331-404)		
158				STS - P017		ContactStore IP 7.4: Installation Guide, dated 7/1/2005 (WSISTS053893-986)		
159				STS - P018		Pre-Sales Solution Suite Overview, dated 10/25/2004 (STS 010144-262)		
160				STS - P020		Voice Over IP Recording Analysis, dated 1/1/2001 (WSISTS007328-346)		
161				STS - P022		Key Performance Metrics, dated 6/27/2005 (WSISTS047415)		
162				STS - P023		Key Performance Metrics, dated 6/28/2005 (WSISTS065436)		
163				STS - P024		Chart (WSISTS065756)		
164				STS - P025		Witness Systems Announces Record Quarterly Results, dated 1/22/2004		
165				STS - P026		Optimizing the VoIP-Enabled Contact Center and Enterprise, dated 3/1/2004		
166				STS - P027		Witness Systems Emerges as the IP Recording Company, dated 7/13/2004		
167				STS - P028		Witness Systems Furthers Support of Virtual Contact Centers Through Its IP Recording Solution, dated 7/13/2005		
168				STS - P029		Your Money's Worth: the Business Value of VoIP Recording, dated 9/1/2005		
169				STS - P030		Witness Systems Reports Second Quarter Results, dated 7/27/2006		

170				STS - P031	Addendum Number 8 to Non-Exclusive Master License Agreement, dated 9/19/2005 (WSISTS065757-771)		
171				STS - P032	Addendum Number 9 to Non-Exclusive Master License Agreement, dated 6/20/2006 (WSISTS065772-777)		
172				STS - P-033	Software License Agreement between Nortel Networks and Witness Systems, dated 6/1/2005 (WSISTS047455-501)		
173				STS - P034	Key Performance Metrics, dated 6/28/2005 (WSNICE027829-833)		
174				STS - P035	Avaya: Witness ContactStore for Communication Manager, Release 7.7, dated 11/1/2006 (WSISTS063087-359)		
175				STS - P066	Voice Over IP Recording with MediaStore, dated 4/5/1999 (WSISTS006427-438)		
176				STS - P067	VoIP Update - Brain Dump following Cisco Meeting 5/7 and Call 6/7 (WSISTS004392-399)	802	
177				STS - P068	VoIP Recorder Product Proposal Document, dated 8/8/2000 (WSISTS005107-129)		
178				STS - P069	Witness V6 Architecture v eWare V6.1 Architecture: An Eyretel View of the Hype! (WSISTS006990-998)		
179				STS - P070	VoIP Recording and Analysis by Dr. Chris Blair (WSISTS004824-853)		
180				STS - P071	VoIP Recording for DG-teleservices (WSISTS002436-458)		
181				STS - P072	MediaStoreIP Technical Guide (WSISTS008221-251)		
182				STS - P073	Recording & Analysis Solutions for CallManager & IPCC (WSISTS001875-926)		
183				STS - P074	CTO to Product Management Brain-Dump, dated 8/3/2001 (WSISTS002260-71)		
184				STS - P075	Engineering Requirements Specifications ERS096: MediaStoreIP 3.1, dated 9/20/2001 (WSISTS007777-7795)		
185				STS - P076	Engineering Technical Note ETN592: OEM Integration Guide, dated 12/31/2001 (WSISTS002993-3020)		

186				STS - P077		Engineering Technical Note ETN658: Core Script Design, dated 3/27/2002 (WSISTS007897-7948)		
187				STS - P078		Developer's Guide ETN543: Unify Scripts for NGA, dated 6/17/2002 (WSISTS007816)		
188				STS - P079		Compliance Recording: System Administration Guide, dated 9/1/2006		
189				STS - P080		Witness ContactStore for Communication Manager Release 7.7, dated 6/1/2006		
190				STS - P081		Knowledge Transfer Kit, Nortel Contact Recording and Quality Monitoring (STS 022500-510)	401, 402, 403	
191				STS - P100		Declaration of Christopher Blair (STS v Witness), dated 5/26/2006		
192				STS - P110		Document Entitled "Witness Systems, Inc.'s Fourth Supplemental L.P. RS 4.3 Disclosures" dated March 22, 2007		
193				STS - P111		Document reflecting Source Code		
194				STS - P112		Document reflecting Source Code		
195				STS - P113		Document reflecting Source Code		
196				STS - P114		Document reflecting Source Code		
197				STS - P115		Document reflecting Source Code		
198				STS - P116		Document reflecting Source Code		
199				STS - P117		Document reflecting Source Code		
200				STS - P118		Document reflecting Source Code		
201				STS - P119		Document reflecting Source Code		
202				Witness - D001		Notice of Rule 30(b)(6) Deposition of Witness Systems, Inc., dated 1/16/2007		
203				Witness - D009		"News Release Entitled ""Witness Systems Introduces Faster, More Efficient Data Monitoring Architecture"" (WSNICE000092-93)"		
204				Witness - D010		Document Entitled "Superior Sales and Customer Service through Advanced Quality Monitoring Technology" (WSNICE000094-99)		
205				Witness - D015		Website Printout Entitled "History of Witness, the Witness Story - Part 1," by Jim Judson (WSNICE027834-838		
206				Witness - D016		Witness Call Monitoring System Manual (NICE 19435-546)		

207				Witness - D017		Witness Call Monitoring System User Manual (NICE 18728-754)		
208				Witness - D019		Key Performance Metrics Document (WSNICE027829-833)		
209				Witness - D020		Witness Systems Customer List (WSNICE027761-828)		
210				Witness - D021; STS - P021		Witness Systems Customer List (WSISTS065344-435)		
211				Witness - D022		Organizational Charts (WSISTS011368-397)		
212				Witness - D023		Document Entitled "Witness revenues" (WSNICE026150)		
213				Witness - D024		Impact 360 Overview/brochure		
214				Witness - D029;STS - P045		Impact 360 Competitive Differentiators, dated 10/14/2005 (WSNICE19255-58)		
215				Witness - D030;STS - P048		Advanced Quality Monitoring Package Features Overview G31Release 7.6, 12/00/2005 (WSNICE19090-179)		
216				Witness - D031		License and Support Agreement between Witness Systems and United HealthCare Services, dated 9/30/2002 (WSNICE024911-927)		
217				Witness - D032		License and Support Agreement between Witness Systems and Target Corporation, dated 9/9/2000 (WSNICE024733-749)		
218				Witness - D033		Competitive Matrix of Multi-Media InterAction Recording Vendors (WSNICE21016-31)		
219				Witness - D034		Competitor playbook for NICE Systems, Last Updated February 15, 2005 (WSNICE003429-38)		
220				Witness - D035		Competitor playbook for NICE Systems, Last Updated March 27, 2006 (WSNICE21097-108)		
221				Witness - D036;STS - P044		Witness ContactStore for Communication Manager: Comparison with NICE Systems CMAPI-Based Recorder, dated 3/27/2006 (WSNICE21118-22)		
222				Witness - D037		Products Comparison Chart (WSNICE21037-38)		
223				Witness - D038		Document Entitled "Data Capture Benchmarking Exercise" (WSNICE003242)		
224				Witness - D039		Witness Competitive Pocket Guide re Eyretel (WSNICE003421-426)		
225				Witness - D040		Minutes of the Pricing Committee of Witness Systems Signed in May of 2005 (WSNICE006703-6711)		

226				Witness - D087		Press Release from Witness Systems		
227				Witness - Napper 1		Mr. Napper's Original Expert Report, dated 4/11/2007		
228				Witness - Napper 2		Mr. Napper's Revised Schedules		
229				Witness - Napper 3		Mr. Napper's Rebuttal Report, dated 6/7/2007		
230				Witness - Napper 5		Advanced Quality Monitoring Package: Overview Guide, dated 12/00/2005 (WSNICE 19096-179)		
231				Witness - Napper 6		License Agreement between Netopia and NIC , dated 2/25/2003 (NICE 331 -351)		
232				Witness - Napper 7		License Agreement between Funk and Dictaphone, dated 12/15/1997 (NICE 25288-315)		
233				Witness - Napper 8		Letter to J. Judson from C. Messologitis, dated 1/15/1997 (NICE 25325-26)		
234				Witness - Napper 9		Letter to R. Tacelli from C. Messologitis, dated 6/30/1997 (NICE 25323-24)		
235						NICE DE 01148912		
236						NICE DE 01444965		
237						WSNSDE061292-394		
238						VOIP Total Analysis 5/10/06 (STS023521-798)		
239						NICE Perform and NICE Universe Analysis (STS032005 (same as NICE45575))		
240						STS039968		
241						VoIP Total Analysis (STS039969-40063)		
242						WSNB021130-45		
243						NS101183		
244						Multiple Products (NSDE 000053 - 000062)	901, 1002	
245						Impact 360/eQuality Balance (NSDE 000063 - 000260)		
246						Impact 360/eQuality Balance (NSDE 000261 - 000476)		
247						Impact 360/eQuality Balance (NSDE 000477 - 000666)		
248						eQuality ContactStore for IP (NSDE 000667 - 000730)		
249						eQuality ContactStore (NSDE 000731 - 000732)		
250						Impact 360/eQuality Balance (NSDE 000733 - 000846)		

251					eQuality ContactStore (NSDE 000847 - 000966)		
252					eQuality ContactStore for IP (NSDE 000967 - 1138)		
253					Impact 360/eQuality Balance (NSDE 001139 - 001350)		
254					Impact 360/eQuality Balance (NSDE 001351 - 001495)		
255					Impact 360/eQuality Balance (NSDE 001496 - 001500)		
256					Witness ContactStore for Communication Manager (NSDE 001501 - 001668)		
257					Impact 360/eQuality Balance (NSDE 001669 - 001772)		
258					Impact 360/eQuality Balance (NSDE 001773 - 001844)		
259					Impact 360/eQuality Balance (NSDE 001845 - 001881)		
260					Impact 360/eQuality Balance (NSDE 001882 - 001910)		
261					eQuality ContactStore (NSDE 001911 - 001964)		
262					Witness ContactStore for Communication Manager (NSDE 001965 - 001978)		
263					Impact 360/eQuality Balance (NSDE 001979 - 001999)		
264					Impact 360/eQuality Balance (NSDE 002000 - 002008)		
265					eQuality ContactStore for IP (NSDE 002009 - 002022)		
266					Witness ContactStore for Communication Manager (NSDE 002023 - 002052)		
267					Witness Quality for Communication Manager (NSDE 002053 - 002214)		
268					Witness ContactStore for Communication Manager (NSDE 002215 - 002296)		
269					Impact 360/eQuality Balance (NSDE 002297 - 002378)		
270					eQuality ContactStore for IP (NSDE 002379 - 002447)		
271					eQuality ContactStore for IP (NSDE 002448 - 002623)		
272					Impact 360/eQuality Balance (NSDE 002624 - 002769)		
273					Witness ContactStore for Communication Manager (NSDE 002770 - 002849)		

274						Witness Quality for Communication Manager (NSDE 002850 - 002901)		
275						Impact 360/eQuality Balance (NSDE 002902 - 002935)		
276						eQuality ContactStore for IP (NSDE 002936 - 002940)		
277						eQuality ContactStore for IP (NSDE 002941 - 003103)		
278						eQuality ContactStore for IP (NSDE 003104 - 003275)		
279						Impact 360/eQuality Balance (NSDE 003276 - 003471)		
280						Witness Quality for Communication Manager (NSDE 003472 - 003591)		
281						Impact 360/eQuality Balance (NSDE 003592 - 003785)		
282						Witness Quality for Communication Manager (NSDE 003786 - 003915)		
283						Impact 360/eQuality Balance (NSDE 003916 - 004016)		
284						eQuality ContactStore for IP (NSDE 004017 - 004021)		
285						eQuality ContactStore for IP (NSDE 004022 - 004082)		
286						eQuality ContactStore for IP (NSDE 004083 - 004092)		
287						eQuality ContactStore for IP (NSDE 004093 - 004119)		
288						Witness Systems v. NICE Systems: Competitive Analysis (STS 020848-860)		
289						WSNB008833-924		
290						NICE's Preliminary Infringement Contentions, dated 4/19/2007		
291						Witness' Objections and Responses to NICE's 1st Set of Interrogatories, dated 1/18/2007		
292						Witness' Objections and Responses to NICE's 2nd Set of Interrogatories, dated 3/2/2007		
293						Witness' Supplemental Response to Interrogatories 1a, 2 and 2a, dated 4/30/2007		
294						Witness' Supplemental Response to NICE's Interrogatory 2 and 2(a), dated 5/30/2007		
295						Witness' 3rd Supplemental Responses to NICE Interrogatory 2 and 2(a), dated 7/10/2007		

296					Witness' 4th Supplemental Response to NICE's Interrogatory 2 and 2(a), dated 9/10/2007		
297					Recorded assignment for the 5,396,371 (Henits) - Endless Loop Voice Data Storage and Retrievable Apparatus and Method Thereof patent (NSDE 1013723-835)		
298					Recorded assignment for the 5,819,005 (Daly) - Modular Digital Recording Logger patent (NSDE 101836-867)		
299					Recorded assignment for the 6,249,570 (Glowny) - System and Method for Recording and Storing Telephone Call Information patent (NSDE 1013868-921)		
300					Recorded assignment for the 6,728,345 B2 (Glowny) - System and Method for Recording and Storing Telephone Call Information Retained patent (NSDE 1013922-956)		
301					Recorded assignment for the 6,775,372 B1 Henits - System and Method for Multi-stage Data Logging patent (NSDE 1013957-981)		
302					Recorded assignment for the 6,785,370 B2 (Glowny) - System and Method for Integrating Call Record Information patent (NSDE 1013982-4028)		
303					Recorded assignment for the 6,870,920 B2 (Henits) - System and Method for Multi-stage Data Logging patent (NSDE 1014029-4060)		
304					Recorded assignment for the 7,010,109 (Gritzer) - Digital Recording of IP Based Distributed Switching Platform patent (NSDE 1014061-4062)		
305					Logger Architecture Assignment, dated 4/19/1991 (NSDE 097535-629)	106, 802*, 901, 1002	
306					Dan Daly Invention Disclosure - Modular Digital System (NICE DE 01137643-661)		

307					Symphony CTI Product Description Engineering Overview Version 1.2 (NSDE 292189-217)		
308					Da Vinci Presentation (NSDE 912796-805)	802*, 901*	
309					Da Vinci Presentation (NSDE 912806-814)		
310					da Vinci Monitoring System Functional Requirements dates 09/09/98 (NSDE 912821-882)		
311					Dos Equis Workstation Introduction (NSDE 409914-938)		
312					Dos Equis Database Server Operations (NSDE 409487-546)		
313					Dos Equis Screen Data Capture Design (NSDE 785690-706)		
314					CRS Next Generation Product Specification (NSDE6012879-911)		
315					LE Functional Specification (NSDE 349247-9316)		
316					DRM Playback Use Cases for 32 Bit Clients (NSDE 223928-935)		
317					Dos Equis Requirements Model (NICE DE 00241079-1143)		
318					da Vinci Liability Product Requirement Specification (NSDE 6133156-239)	802*, 901*	
319					Da Vinci Hardware Specifications (NSDE 35011-240)	106, 401, 402, 403, 802, 901, 1002	
320					Request for Proposal - Communications Recording System (NICE_DE_00354283-294)	401, 402, 403, 802, 901	
321					NS003900-4010		
322					NiceLog High Density Logger Hardware Guide (NS004920-5164)		
323					NICE Perform Architecture Overview (NS000093-112)		
324					NiceLog Provides Enhanced Voice & Screen Recording (NICEINC.0024027-028)		
325					NICE Perform Solution Brief (NS000256-269)		
326					Business Performance Management (NS017035-047)		
327					NICE Perform Brochure (NS016953-958)		

328					NiceCLS Processor HDL Suite (NICE_DE_1120679-727)		
329					NICE Perform Release II Quick Reference (NS000392-417)		
330					Solutions for Financial Markets Presentation (NS017175-272)		
331					NICE Perform Release II: Applications and Playback Servers Setup Guide (S003692-765)		
332					NICE CEM Integration with Avaya CMAPI Connector Server (STS 015593-695)		
333					Recording In the Avaya Communication Manager Environement (STS 016004-024)		
334					Avaya-NICE IP600 (STS 016254-261)		
335					NICE Presentation - CMAPI (STS 016547-617)		
336					NICE Perform Integration with Avaya CVLAN (NS006011-139)		
337					Letters from Dictaphone Corp. ("Dictaphone") to Eyretel PC ("Eyretel") (WSNSDE 061242 - WSNSDE061252)	802*, 901*	
338					Witness Systems Inc.'s Form 10-k as filed with the U.S. Securities and Exchange Commission on March 14, 2003 for the period ending December 31, 2002	Not Produced or not sufficiently identified	
339					Witness Systems Inc.'s Form 10-k as filed with the U.S. Securities and Exchange Commission on March 14, 2004 for the period ending December 31, 2003	Not Produced or not sufficiently identified	
341					Witness Systems Inc.'s Form 10-k as filed with the U.S. Securities and Exchange Commission on April 2, 2007 for the period ending December 31, 2006	Not Produced or not sufficiently identified	
343					ContactStore for IP "Droopy" Vision dated August 2, 2005 (WSDEPROD 1954542)	802	
346					Dictaphone Communication Recording Systems Management Presentation, dated October 2005 (NSDE006163)	802*, 901*	

349						NICE Systems Ltd.'s Form 20-F as filed with the U.S. Securities and Exchange Commission on May 17, 2006	Not Produced or not sufficiently identified	
350						Exhibits B-12 and B-13 to Witness Systems Inc.'s Objections and Responses to NICE's Second Set of Interrogatories dated March 2, 2007		
351						Email from Daniel A. Kent, counsel for Witness Systems to Joseph M. Drayton, counsel for NICE dated December 21, 2006	401, 402, 403, 802	
352						Letter from Daniel A. Kent to Joseph Drayton without attachments, dated 5/4/2007	401, 402, 403, 802	
353						Letter from Daniel A. Kent to Joseph Drayton without attachments, dated 8/8/2007	401, 402, 403, 802	
357						eQuality Contact Store Plus, Overview Guide, Version 6.5.5 dated July 2005 (WSNICE009833 & WSNICE009894)		
359						Impact 360 Quality Monitoring Server Infrastructure Guide, Version 7.7.0, dated April 2006 (WSDEPROD1338979-9068)		
360						Quality Monitoring with 100% Recording, Version 7.6.1 - Overview Guide, dated January 2006 (WSDEPROD1338540-8601)		
361						Response to USCIS NCSC, Quality Monitoring RF 05 2005, Pearson Government Solutions, dated May 2004 (WSDEPROD3346618-6735)	802, 901	
362						Witness ContactStore for Communication Manager Search and Replay Help, dated January 2005 (NICE_DE_01127158-171 or NICE_DE_01126761-6774)	802	
363				Nice -P324		Witness Systems eQuality Balance R6.4 System Architecture Overview, dated March 2004 (WSDEPROD0536266-6343)		
364						Witness Systems - The eQuality Suite, Pre-Sales Solution Suite Overview Presentation, dated October 2005 (NICE DE 00815912-6037)		

365						eQuality ContactStore Archive and Adapter Installation and Configuration (WSDEPROD0130158-249)		
366				Nice -P309		eQuality ContactStoreIP System Guide (NICE_DE_01134674-4845)		
367				Nice -P320		Impact 360 Archive Installation and Administration Guide, Release 7.7.1, dated September 2006 (NICE_DE_01127176-7465)		
368				Nice - P300		Nortel TDM Recorder System Administration Guide, Product Release 6.0, dated July 2006		
369						Optimizing Agent Performance with eQuality at Nissan Motor Acceptance Corp., dated February 2002 (WSDEPROD1062202-2325)		
370						Impact 360 Compliance Package from Witness Systems - Powered by Avaya, dated 2006 (NICE_DE_00812909-912)	802	
371						Avaya-Witness Quality for CM Brochure (WSDEPROD001251-565)	802	
372						Avaya Brochure- QCM now Impact 360 Quality Monitoring Package	802	
377						Nortel Contact Recording, Nortel Quality Monitoring Sales Engineering Technical Overview, dated February 2006 (WSDEPROD0317200-249)	401, 402, 403, 802	
378						Vision Document - Nortel Contact Recording & Quality Monitoring v6.1 and v6.2, dated 03/07/2006 (WSDEPROD0309370-384)	401, 402, 403, 802	
381						Unity Solution Installation and Support Guide-ContactStoreIP Plus (WSDEPROD0762476-480)		
382						Nortel Sales and Marketing Bulletin Announcing the Introduction of Nortel Contact Recording 6.0 and Nortel Quality Monitoring 6.0 for IP Configuration and Controlled Availability, dated 01/30/2006 (WSDEPROD0317257-276)	401, 402, 403, 802	

383						Quality Monitoring Installation Guide, Version 7.7, dated April 2006 (WSDEPROD0186272-497)		
384						Impact 360 Operational Package Hardware Sizing Guidelines Version 7.7.1, dated 10/05/2006 (WSDEPROD2772467-566)		
385						Optimizing Agent Performance with eQuality United Stationers Supply Co., dated 06/17/2002 (WSDEPROD1936548-593)		
386						Avaya Quality Assurance Solutions-Witness Call Recording Solutions "Powered by Avaya", dated 10/15/2003 (WSDEPROD0011271-304)	802	
387						eQuality Balance 6.4 Server Infrastructure Guide for System Administrators, dated 2004 (WSDEPROD0112126-243)		
388						Witness ContactStore for Communication Manager Release 7.7 Planning, Installation and Administration Guide, dated October 2006 (WSDEPROD0264074-339)	802	
389						Witness Nortel Contact Recording Planning Installation and Administration Guide (WSDEPROD0582260-475)	401, 402, 403, 802	
390						Eyretel Contact Archive 7.1 Installation Guide (WSDEPROD1303653-713)		
391						Witness Archive Installation Guide (WSDEPROD1532258-305)		
392						Impact 360 Advanced Package Hardware Sizing Guidelines Version 7.7.1 (WSDEPROD2772365-466)		
393						Witness ContactStore 7.2 for Communication Manager Offer Definition, dated 10/20/2004 (WSISTS017246-290)	802	
394						Eyretel Engineering Technical Note ETN658, Core Script Design, dated 2002 (WSISTS003036-87)		
395						Selling eQuality ContactStoreIP Plus (WSDEPROD1858124-71)		
396						Eyretel Integration Specifications, LGE Louisville/Lexington (WSDEPROD316917-26)		

397						Witness Systems Response to Coral Racing via BT, Business Process and Requirements capture Telephone Recording and Quality Assurance, Version 1.1 Status: Final, dated 05/25/2005 (WSDEPROD0428662-770)		
398						ContactStoreIP Implementation Document for Vodafone CTS, dated 06/01/2004 (WSDEPROD2514206-21)		
399						Statement of Work - The Hartford APL UCID Project, dated 06/31/2003 (WSDEPROD0607440-71)		
400						Land Rover LRUC905 Search and Replay Contacts from Viewer, dated 03/08/2005 (WSDEPROD1517850-861)		
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693					Initial Disclosure of Nice Systems, Ltd., dated 10/17/2006		
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695					Management Organizational Chart (NICE 18683-86)		
696					Notice of Deposition of Shlomo Shamir, dated 08/14/2007		

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821				STS - P036		Eyretel Announces VoIP Agreement with Cisco for Customer Contact Recording Solutions, dated 3/14/2001 (WSISTS010993-994)		
822				STS - P037		PTP028 Media StoreIP First GA Release, dated 6/18/2001 (WSISTS008936-948)		
823				STS - P038		MediaStoreIP 3.1: Market Requirements Document (MRD005), dated 5/11/2001 (WSISTS008193-216)		
824				STS - P039		MediaStoreIP System Administration Guide, dated 5/1/2001 (WSISTS008252-315)		
825				STS - P040		MediaStoreIP 3.1 System Administration Guide: For MediaStoreIP, MicroIP, ExecRecord and Observer Server Based Systems, dated 11/1/2001 (WSISTS008740-8914)		
826				STS - P041		CSIP 7.2 New Features (WSISTS011030-1037)		
827				STS - P042		Avaya: Witness Recording Solutions for Avaya Communication Manager, dated 6/24/1905		
828				STS - P043		Non-Exclusive OEM Master License Agreement between Witness Systems and Avaya Inc. (WSISTS047502-7540)		
829				STS - P046		Impact 360: Solutions Guide, Operational Compliance IP Telephony, dated 6/27/2005 (WSNICE18798-819)		

830				STS - P047		Impact 360: Solutions Guide, Operational Quality Monitoring, dated 6/27/2005		
831				STS - P049		Business Organization Chart, dated 6/13/2005 (WSISTS011368-397)		
832				STS - P050		Requirements of next Version of the CotactStoreIP Product, dated 5/26/2004 (WSISTS009925-89)		
833				STS - P082		Subpoena of Nortel Networks Inc. c/o Donald L. Powers, Esq., dated 2/1/2007	401, 402, 403	
834				STS - P083		Nortel Contact Recording, Nortel Quality Monitoring (Nortel 0037-56)	401, 402, 403, 802	
835				STS - P084		Nortel Contact Recording, Nortel Quality Monitoring (Nortel 0001-33)	401, 402, 403, 802	
836				STS - P085		E-mail from David Murray to Lloyd Ferraro Jr, re: Harrison OEM Draft - Complete Internal Review Prior to Monday Negotiation - background on NICE/Witness Legal Issues, dated 2/25/2005 (Nortel 0057-66)		
837				STS - P086		Nortel Announcement of Witness Systems OEM Relationship (Nortel 0034-36)	401, 402, 403, 802	
838				STS - P087		Nortel NICELog & NICEUniverse VoIP Recording Using Duplicate Media Stream by NICE Systems Limited, dated 4/6/2007	401, 402, 403, 802	
839				STS - P088		Nortel Contact Recording and Nortel Quality Monitoring: Complete and Fully-Integrated Recording and Quality Monitoring Solutions -- all from Nortel	401, 402, 403, 802	
840				STS - P089		Nortel Networks IP Contact Center Solutions: Capitalize on IP telephony to improve Costs, Productivity, and performance-- without Overhauling the Communications infrastructure	401, 402, 403, 802	
841				Witness - P005		NICE INC. 002903-2925		
842				Witness - P010		NICE INC. 004426-36		
843				Witness - P012		NICE Systems Limited Rule 20-F Filing		
844				Witness - P020		NICE 02818-821		
845				Witness - P021		NICE 023168-88		
846				Witness - P022		NICE 023591 -593		
847				Witness - P023		NICE 029937-952		
848				Witness - P024		NICE 032335-344		

849				Witness - P025	NICE 064600-629		
850				Witness - P026	NICE 00969-1001		
851				Witness - P027	NICE 023484-487		
852				Witness - P028	NICE 024143-170		
853				Witness - P029	NICE 009740-41		
854				STS - D026	NICE VoIP for Cisco AVVID (STS 001002-1003)		
855				STS - D028	NICE and Cisco ICM/IPCC Integration (STS 001006-1008)		
856					NICE_DE_001136430-441		
857					NICE_DE_01136409-18		
858					NICE_DE_01136610-01136689		
859					NICE_DE_01136422-28		
860					NICE_DE_01136448-460		
861					NICE_DE_01136469-474		
862					NICE_DE_00981548-1783		
863					Complaint (NICE v Witness 1:06- cv-0311), dated 5/10/2006		
864					Complaint seeking Declaratory Judgment, 1:2006-cv-3122 (NDGA)-TCB, dated 12/27/2006	401, 402, 403	
865					Witness' 1st Amended Answer & Counterclaim to Complaint seeking Declaratory Judgment, dated 1/10/2007		
866					Witness' 1st Amended Answer, Defenses, and Counterclaims, dated 1/30/2007		
867					Witness' Answer and Defenses to Complaint, dated 6/30/2006		
868					NICE's 1st Set (1a) of Requests for Admission to Defendant Witness, dated 1/31/2007		
869					Witness' Objections and Responses to NICE's 1st Set Request for Admissions, dated 3/2/2007		
870					Witness' 1st Set of Requests for Admission to NICE, dated 1/31/2007		
871					NICE's Objections and Responses to Defendant Witness Systems, Inc.'s First Set of Requests for Admissions, dated 3/2/2007		
872					Declaration of Loren Wimpfheimer, dated 6/4/2007		

873					Declaration of Peter D Fante, Esq. in Support of Non-party Verint Systems Inc's Motion to Quash Subpoena w/ Exhibits, dated 4/6/2007		
874				Witness - P076	"NICE VoIP Product Data Sheet" (NICE INC. 024266-67)		
875				Witness - P079	NICE Universe Version 4.2, Users Manual, November 1999" (NICE INC. 020783-890)		
876				Witness - P088	Invoices (NICE 18281-547)		
877				Witness - P089	Document bearing Service and Maintenance Item (NICE 17933-18280)		
878				Witness - P095	Price List from 2000 (NICE INC. 031703-730)		
879				Witness - P096	MFG Report (NICE 18620-45)		
880				Witness - P097	MFG Report (NICE 18646-58)		
881				Witness - P098	MFG Report (NICE 18659-70)		
882				Witness - P099	MFG Report (NICE 18671-82)		
883				Witness - P102	Report (NICE 17868-78)		
884				Witness - P111	Source Code File titled "LoggerPBAPI"		
885				Nice - HenitsD058	United States Patent Number 6,785,378 dated 8/31/2004 (WSNSDE0010104-168)		
886				Nice - HenitsD059	Various Agreements, dated 1/22/1997 (NSDE 727858-908)		
887				Nice - P104	MediaStore Logger Photo (front panel 1)	901, 1002	
888				Nice - P105	MediaStore Logger Photo (front panel 2)	901, 1002	
889				Nice - P106	MediaStore Logger Photo (card 1 – MediaStore Digital Line Interface Card)	901, 1002	
890				Nice - P107	MediaStore Logger Photo (card 2)	901, 1002	
891				Nice - P108	MediaStore Logger Photo (inside of housing)	901, 1002	
892				Nice - P109	MediaStore Logger Photo (card 3)	802, 901, 1002	
893				Nice - P110	MediaStore Logger Photo (card 4 – Analogue Line Input Card)	901, 1002	
894				Nice - P111	MediaStore Logger Photo (card 5)	802, 901, 1002	
895				Nice - P112	MediaStore Logger Photo (card 6)	802, 901, 1002	
896				Nice - P113	MediaStore Logger Photo (card 7)	901, 1002	
897				Nice - P114	MediaStore Logger Photo (back panel)	901, 1002	

898				STS - D067		Research and Development Agreement between NICE Systems, Ltd. and NICE Systems, Inc. (STS 05435-440)		
899				STS - D069		Services and Cost Sharing Agreement between NICE Systems, Ltd. and NICE Systems, Inc., dated 7/15/2003 (STS 035441-446)		
900				STS - D072		DeveloperConnection Program for Independent Software/Hardware Developers Agreement between Avaya and NICE Systems, Ltd., dated 3/11/2005 (STS 017491-494)		
901				STS - D074		Amendment One between Avaya and NICE Systems, Inc., dated 4/10/2007 (STS 032006-25)		
902				STS - D075		Developer services Program Agreement between Cisco and NICE Systems, Ltd., dated 9/30/2005 (STS 017496-506)		
903				STS - P001		Notice of Supplemental and Amended Rule 30(B)(6) Deposition of Witness Systems, Inc., dated 1/5/2007		
904				STS - P002		Notice of Second Supplemental and Amended Rule 30(B)(6) Deposition of Witness Systems, Inc., dated 2/12/2007		
905						Complaint dated June 19, 2000 filed in Dictaphone Corp. v. NICE Systems Ltd. & NICE Systems, Inc. Civ. No. 00-1143 (CFD) (D. Conn.)	Not Produced or not sufficiently identified	
906				Witness - D070		Product Note by Damian Smith, dated 4/10/2002 (WSNICE2985-97)		
907				Witness - D074		OEM Agreement between Witness Systems and Avaya (WSISTS47502 -540)		
908				Witness - D075		Agreement between Witness Systems and Nortel Networks , dated 6/6/2005 (WSISTS47455-7501)	401, 402, 403	
909				Witness - D076		Press Release from Witness Systems titled, "Nortel Selects Witness Systems for Enhanced Contact Center Capabilities," dated 9/20/2005 (STS 019769-770)		

910				Witness - D078		Document titled, "Presale Solutions Suite Overview of the Witness Systems eQuality Suite.", dated 10/25/2004 (STS 10144-262)		
911				Witness - D079		Avaya Promotional Collateral		
912				Witness - D080		Document titled, "Witness Recording Solutions for Avaya Communication Manager."		
913				Witness - D082		Screen shot from the Avaya Website		
914				Witness - D083		Witness ContactStore for Communication Manager Release 7.3 System Administration Guide (STS 24158-324)		
915				Nice - P707		Press Release "Witness Systems Extends VoIP Recording Capabilities" (WSDEPROD0100427-429)		
916				Nice - P708		Engineering Research Work (WSDEPROD1650584-592)		
917				Nice - P720		NICE System 2Q04 Earnings Conference Notes, dated 7/28/2004 (WSDEPROD1553455-3473)		
918				Nice - P721		Webinar Slides for Recording Products (WSDEPROD1552179-2215)		
919				Nice - P722		1Q05 Competitive Intelligence Update (WSDEPROD0043256-299)		
920				Nice - P723		Witness Systems Competitive Edge, dated 10/20/2006 (WSDEPROD316613-655)		
921				Nice - P724		E-mail from Hegebarth to Discombe, dated 9/30/2004 (WSNB008557-558)	802	
922				Nice - P725		E-mail Chain from Dr. Bourne to Mr. McLean, dated 11/12/2004 (WSNB009011-9013)	802	
923				Nice - P726		E-mail Chain from Hegebarth to Avaya Core Team, dated 6/29/2005 (WSNB009743-745)	802	
924				Nice - P142		Adtech Solutions (WSDEPROD0042369-381)	802	
925				Nice - P143		Witness General Business an Adtech Partner Program	802	
926				Nice - P144		Chart (ADTECH000322-352)	802	

927				Nice - P146		Participation Agreement By and between Witness Systems Limited and Adtech International Limited to the Master Distributor Agreement, dated 1/28/2004 (ADTECH000150-159)	802	
928				Nice - P147		Supply Agreement (ADTECH000123-149)	802	
929				Nice - P148		Adtech Global Solutions Channel Partner Agreement Packet (ADTECH000232-244)	802	
930				Nice - P149		Witness Services Agreement, dated 7/11/2005 (WSDEPROD3457732 -736)	802	
931				Nice - P150		Channel Partner Guide (ADTECH000028-122)	802	
932				Nice - P151		Invoice, dated 6/14/2006 (ADTECH008362-366)	802	
933				Nice - P152		Agreement between Adtech and Alnon, dated 6/22/2006 (ADTECH000253-260)	802	
934				Nice - P153		Letter from Susan England (Witness) (ADTECH010687-712)	802	
935				Nice - P154		Certification Program, dated 5/6/2002 (ADTECH010713-69)	802	
936				Nice - P155		Reseller Program Guide for Witness Systems (WSDEPROD0011063 -69)	802	
937				Nice - P156		Witness Systems Express Turnkey Hardware Package (WSDEPROD0045017 -19)	802	
938				Nice - P157		Witness Systems Express Turnkey Hardware Package (WSDEPROD0045014 -016)	802	
939				Nice - P158		Witness Systems Mid-Market Turnkey Hardware Package (WSDEPROD0020379 -384)	802	
940				Nice - P159		Witness Systems Mid-Market Turnkey Hardware Package (WSDEPROD0020382-384)	802	
941				Nice - P160		Witness Systems Lucent Turnkey Hardware Package (WSDEPROD0045020 -22)	802	
942				Nice - P161		Witness Systems Mid Market Turnkey Hardware Package (WSDEPROD0020391 -393)	802	
943				Nice - P162		Witness Systems Express PLUS States Turnkey Hardware Package (WSDEPROD0020549-551)	802	

944				Nice - P163		Witness Systems Express Turnkey Hardware Package (WSDEPROD0041756 -758)	802	
945				Nice - P164		Quote, dated 12/2/2005 (ADTECH007898 -905)	802	
946				Nice - P165		Quote, dated 12/2/2005 (ADTECH007606-613)	802	
947				Nice - P166		Quote, dated 6/29/2006 (ADTECH004068-070)	802	
948				Nice - P167		Quote, dated 2/13/2004 (WSDEPROD0340479-81)	802	
949				Nice - P168		Quote, dated 3/4/2004 (WSDEPROD0098311-314)	802	
950				Nice - P169		Quote, dated 3/31/2004 (WSDEPROD0098459-462)	802	
951				Nice - P170		Inventory Sale and Facilities Agreement, dated 4/1/2003 (WSDEPROD3335233-255)	802	
952				Nice - P172		System Order Number 22521, dated 11/30/2004 (WSDEPROD3354129-130)	802	
953				Nice - P710;STS - P065		STS v Witness Issues Summary-Avaya (AVAYA011161-63)		
954				STS - P052		Subpoena of Avaya Inc. c/o Pamela F. Graven, Senior VP, dated 6/20/2005		
955				STS - P053		Avaya Communication Manager API, Overview, dated 12/1/2003		
956				STS - P054		Avaya Communication Manager API, Java Programmer's Guide, dated 12/1/2003 (STS 003191-270)		
957				STS - P055		Design Considerations for AE Services Service (Communication Manager API) and Avaya Communication Manager for Call Recording Solutions		
958				STS - P056		Avaya IP Voice Quality Network Requirements, dated 4/1/2006		
959				STS - P057		Avaya IP Telephony Implementation Guide, dated 5/1/2006		
960				STS - P058		Impact 360: Compliance Recorder, System Infrastructure Guide, dated 3/1/2006		
961				STS - P059		Avaya Product Transition from Witness ContactStore for Communication Manager 7.1, 7.2, 7.3 to Witness CSCM 7.7, dated 2/2/2007		
962				STS - P060		Chart	802*, 901	

963				STS - P061		Avaya Witness ContactStore Website, Overview, dated 4/20/2006		
964				STS - P062		Avaya Witness ContactStore Website, Description, dated 4/20/2006		
965				STS - P063		Avaya Witness ContactStore Website, Technical, dated 4/20/2006		
966				STS - P064		E-mail from Bill Schneider to Michael B Wallace, Subject: NICE Lawsuit, dated 8/4/2004 (AVAYA011165)		
967				Nice - P211		Engineering Org Chart (WITSDE 0073664-668)		
968				Nice - P212		Integration Engineering Skills Matrix, dated 2/25/2003 (WSDEPROD0710987-995)		
969				Nice - P213		Draft Document Created for Planning (WSDEPROD3288949-8954)		
970				Nice - P214		Witness - 7.8 Recorder - Secure Data in Transit with SSL-Software Architecture (WSDEPROD3182698-2731)		
971				Nice - P215		Eyretel Protocol Specification ETN784, dated 11/13/2006 (WSDEPROD1945560-5604)		
972				Nice - P216		Rough draft of Integration Framework Component 7.8, dated 12/14/2005 (WSDEPROD1700186-229)		
973				Nice - WatsonD758		7.8 Technical Stack (WSDEPROD2559967-974)		
974						WSISTS003036-3087		
975						NSDE0911814-0912044		
976						NSDE0912045-0912264		
977						NSDE044699-0044934		
978						NSDE0912265-0912404		
979						NSDE6045275-6045283		
981						NICE_DE_01357260-740		
982						NICE_DE_00990946-00991021		
983						NICE_DE_01302136-01302214		
984						NICE_DE_00828216-00828268	802, 901	
987						NICEINC0024027-0024028		
988						NS000105-000155	106, 401, 402, 403, 1002	
989						NS003629-003765		
990						STS015593-015695		

991					NICE_DE_00062423-444		
992					NICE_DE_00165888-939		
993					NICE_DE_00166474-521		
994					NICE_DE_00066311-506		
995					NICE_DE_00161963-981		
996					NICE_DE_00639487-488		
997					NS000049-86		
998					NS016971-972		
999					NS000941-972		
1000					NICE_00367-368		
1001					NS016745-754		
1002					NS000226-253		
1003					NS000043-48		
1004				Nice - P102	Media Store Schematics	901	
1005				Nice - P116	MediaStore Schematic (E1/T1/ J1 Interface Module	901	
1006				Nice - P117	Global Crossing Presentation (WSDEPROD5129574-599)		
1007				Nice - P118	Witness Systems Design Specification EDS229, Express E1T1 (WSDEPROD1279982-989)		
1008				Nice - P119	Eyretel Technical Note ETN671, EMCC/NGR Device Driver and Hardware API (WSDEPROD1287704-23)		
1009				Nice - P120	Eyretel Engineering Technical Note (ETN-401) – Using Unify Script (WSDEPROD1284962-5082)		
1010				Nice - RudnickD011	NICE Perform Application Suite (NSDE_004120-122)		
1011				Nice - RudnickD012	Label NICELog (STS 017145)		
1012				Nice - RudnickD013	Worldwide Voice Loggers Markets (NICE 133202-281)		
1013				Nice - P132	Witness Systems Engineering Technical Note ETN789 - ContactStore IP 3.1 to 7.x Upgrade Procedure, 2003, dated 6/25/1905 (WSDEPROD1543023-67)		
1014				Nice - P134	Eyretel Technical Note ETN239 - Future MediaStore Operation System, 1999, dated 6/21/1905 (v-962)		
1015				Nice - P135	Eyretel Technical Note ETN367 - MediaStore Micro Way Forward, 1999, dated 6/21/1905 (WSDEPROD1284497-4513)		
1016				Nice - P136	Eyretel Product Development Needs (WSDEPROD1546516-6540)		

1017				Nice - P137		EMEA Senior Management Team, dated 07/002006 (WSDEPROD0245691-694)		
1018				Nice - P138		General Business Ops Channel, dated 04/00/2005 (WSISTS01136-1197)		
1019				Nice - P139		Avaya Sales Training Witness ContactStore and Quality for Communication Manager, dated 03/00/2004 (WSDEPROD0012073-2204)		
1020				Nice - RodenD002		Project Washington - Publication List, dated 1/16/2007 (V000102)		
1021				Nice - RodenD003		Impact 360 License Orders % of Total License Orders 2005-2006 (V000103)		
1022				Nice - RodenD004		Impact 360 License Orders % of Total License Orders 2005-2006 (V000108)		
1023				Nice - RodenD005		Breakdown of Witness Revenue between indirect and OEM orders		
1024				Nice - RodenD006		Indirect Orders 2005-2007 (V000109)		
1025				Nice - RodenD007		New Customer and % License Revenue from New Customers 2004-2006 (V000106)		
1026				Nice - RodenD008		New Customer and % License Revenue from New Customers 2004-2006 (V000110)		
1027				Nice - RodenD009		Revenue by Customer, top 20 Customers 2005-2006 (V000107)		
1028				Nice - RodenD010		Revenue by Customer, Top 20 Customers 2005-2006 (V000111)		
1029				Nice - RodenD011		E-mail to L. Drucker from W. Silverio, dated 2/8/2007 (V001459-508)	802	
1030				Nice - RodenD012		AVAYA: Witness Recording Solutions for Communication Manager - Overview (V000519-530)		
1031				Nice - RodenD013		AVAYA: Witness Contact Store for Communication Manager (V000472-494)		
1032				Nice - RodenD014		Project White Presentation, dated 2/11/2007(V000015-50)		
1033				STS - D052		Product tag of NICE Systems' Voice Over IP Logger (STS 017149)		

1034				STS - D053		United States PTO Notice of Recordation of Assignment Document, dated 12/11/2003 (STS 008906-939)		
1035				STS - D056		NICE "Insights from InterActions" Promotional Material, Descriptions of Technical Aspects of VoIP		
1036				STS - D057		NICE Systems Presentation for Cisco Systems: "NICE Systems Recording Solutions Overview", dated 7/24/2001 (WSISTS053377-425)		
1037				STS - D058		NICE VoIP Recording Overview, dated 4/1/2003 (WSISTS053427-484)		
1038				STS - D059		NICE Promotional Material, Descriptions of Technical Aspects of VoIP		
1039						Repeat Document (NS000150-155)		
1041				Nice - P121		Project Gemini CSCM 7.7, Vision (WSDEPROD5119998-20013)		
1042				Nice - P123		ContactStore for Communication Manager CSCM 7.3.1, Vision (WSDEPROD5119747-759)		
1043				Nice - P124		PR-WY-1044 Archive Support for Post Call Tagging, Supplementary Specification (WSDEPROD0579201-206)		
1044				Nice - P125		Witness Systems, Inc. IP Capture Engine Design Draft 1.0 (WSDEPROD1541655-673)		
1045				Nice - P126		Meeting of the Minutes (Attendees Gary Duke, Duane Wright), dated 11/18/2004 (WSDEPROD0747426-427)		
1046				Nice - P127		Woody, Use Case Model (WSDEPROD1123034-085)		
1047				Nice - P128		Woody/Land Rover, HDL-Robust Consolidation (WSDEPROD3175874-922)		
1048						Laptop Computer containing Source Code produced by Witness Systems		
1049						Source Code produced by Witness Systems (WSNSDE 011248-016705)		
1050						Source Code produced by NICE Systems		
1051						Earnings Spreadsheets (WSNSDE054369)		

1052				STS - P120		Cisco Systems/ Eyretel Overview (STS 3046-50)		
1053						WSDEPROD011271-304		
1054						WSDEPROD0735534-559		
1055						WSDEPROD0186272-497		
1056						C:\eyretel\cscm_7_7_1\docs\src\Sy stem Administration Guide Directory within Source Code Laptop produced by Witness Systems		

Where a citation to a particular Federal Rule of Evidence is accompanied by an "", Witness Systems' objections apply to the inclusion of certain notes and/or marginalia found in the proposed exhibit. The objections do not necessarily relate to the entire exhibit.

**Witness Systems reserves the right to object to any exhibit on the basis of relevance. Witness Systems further reserves the right to revise its objections to the extent any subsequent rulings of the Court affect the relevance and admissibility of any of NICE's proposed exhibits.

***Witness Systems reserves all objections to any of NICE's proposed exhibits to the extent that any exhibit either was not produced to Witness Systems or was not sufficiently identified by production number or by deposition exhibit number to allow Witness Systems the ability to ascertain the content of those proposed exhibits.

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
1	1	4/4/2007	May 2000 Review Priority Responsibilities and Objectives	NSDE0457264	NSDE0457267	802
2	2	4/4/2007	Letter/Agreement re separation of employment	RICHTER0019	RICHTER0024	401, 402, 802
3	3	4/4/2007	Letter from Jonathan Lori to John Ives and Susann Fitzgerald re daVinci Testing & Software	NSDE0229241	NSDE0229241	802
4	4	4/4/2007	Internal memo from Nick D'Agosto re CRS VoIP Team Meeting - 08/24/2005 11:00am	NICE_DE_00172697	NICE_DE_00172699	802
5	5	4/4/2007	Marketing material for 10 Reasons to Join the Nice User Group	NSDE06030427	NSDE06030429	802
6	8	4/4/2007	U.S. Patent No. 6,728,345	WSNSDE0009547	WSNSDE009611	
7	9	4/4/2007	Notice of Deposition of John Richter	N/A	N/A	401, 402
8	1	5/14/2007	Subpoena	N/A	N/A	401, 402
9	3	5/14/2007	Racal Recorders Marketing Material	NSDE008303	NSDE008303	401, 402, 901, 802
10	1	5/15/2007	Notice of Deposition of Salvatore J. Morlando	N/A	N/A	401, 402
11	2	5/15/2007	Subpoena	N/A	NA	401, 402
12	3	5/15/2007	ProLog Software Resources (Pie graphs)	N/A	N/A	
13	4	5/15/2007	ProLog Development Team Data	DICT0053483	DICT0053486	
14	5	5/15/2007	ProLog Software Resources	NSDE0860590	NSDE0860599	
15	6	5/15/2007	Monthly Progress Report for June 1992 prepared by Morlando	NSDE0154552	NSDE0154553	
16	7	5/15/2007	Monthly Report prepared by Sal Morlando	NSDE0865049	NSDE0865053	
17	11	5/15/2007	Memo from Linda Dilauro re competitive Information	NSDE0473438	NSDE0473441	802
18	12	5/15/2007	Letter from L.E. Bergeron re DX7000 Development Activity & Schedules	NSDE011734	NSDE011766	
19	13	5/15/2007	U.S. Patent No. 5,274,738	N/A	NA	

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
20	14	5/15/2007	Declaration and Power of Attorney USPTO communication (Modular Digital Voice Processing System)	WSNSDE0008586	WSNSDE0008589	
21	15	5/15/2007	Award Program for Henits and Swick	NSDE0687032	NSDE0687032	
22	1	5/16/2007	Subpoena	N/A	N/A	401, 402
23	3	5/16/2007	List of New Hires for Feb - Dec 1985	NSDE0458560	NSDE0458560	802
24	4	5/16/2007	Robert Swick Deposition	NSDE0015665	NSDE0015752	401, 402, 403, 701, 802
25	6	5/16/2007	U.S. Patent No. 5,819,005	WSNSDE0008925	WSNSDE0008932	
26	8	5/16/2007	USPTO search result list for Robert Swick	N/A	N/A	
27	1	5/17/2007	Notice of Deposition of David Glowny	N/A	N/A	401, 402
28	2	5/17/2007	Notice of Deposition of David Glowny	N/A	N/A	401, 402, 403
29	3	5/17/2007	Subpoena	N/A	N/A	401, 402
30	4	5/17/2007	U.S. Patent No. 6,249,570	DICT000064	DICT000126	
31	5	5/17/2007	DOS Equis Call Record Generator Design Version 0.7 (manual) prepared by John Richter	FG00010497	FG00010545	
32	6	5/17/2007	Presentation entitled daVinci and Cool Technology	DICT0118296	DICT0118318	
33	7	5/17/2007	daVinci proposal documents for Johnson Controls, Inc. Quality Monitoring Tool	NSDE0372186	NSDE0372334	
34	8	5/17/2007	daVinci by Dictaphone Presentation	NSDE06015030	NSDE0615091	
35	9	5/17/2007	USPTO communication re transmittal of Declaration and Power of Attorney	WSNSDE0009133	NSDE0009135	106
36	10	5/17/2007	Declaration and Power of Attorney	WSNSDE0009986	WSNSDE0009987	106
37	11	5/17/2007	Declaration and Power of Attorney	WSNSDE0009423	WSNSDE0009424	106
38	12	5/17/2007	NICE separation letter/agreement	GLOWNY0018	GLOWNY0023	401, 402, 403
39	13	5/17/2007	Dos Equis CTI Server Design Version 0.2 prepared by David Glowny	NSDE0409563	NSDE0409584	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
40	14	5/17/2007	daVinci - Awards	N/A	N/A	
41	14	5/17/2007	daVinci - Awards	N/A	N/A	
42	3	5/22/2007	Subpoena (Dan Daly) dated 12/15/2006	N/A	N/A	401, 402
43	4	5/22/2007	Notice of Deposition of Daniel F. Daly	N/A	N/A	401, 402
44	5	5/22/2007	VTC Meeting Agenda	NSDE0791796	NSDE0791815	802
45	6	5/22/2007	1993 Objectives by Daniel Daly	NSDE0266948	NSDE0266956	
46	7	5/22/2007	Progress Report by David B. Chamberlin	NSDE0566819	NSDE0566832	802
47	8	5/22/2007	Memo re Product Test System	NSDE0307245	NSDE0307252	802
48	10	5/22/2007	IO Ltr re CRS RVP Meeting Summary	NSDE0763707	NSDE0763717	802
49	11	5/22/2007	IO ltr re MAGNASYNC DVL 1000	NSDE0473509	NSDE0473511	802
50	12	5/22/2007	MDL Product Plan Overview and Comparison	NSDE0500866	NSDE050086	802
51	13	5/22/2007	IO ltr from Bob Paulson re Guardian Phase 2 Specification, Revision 2.4	NSDE0695637	NSDE0695726	802
52	14	5/22/2007	Memo re Eyretel User's Manual (attached)	NSDE899672	NSDE0899754	802
53	15	5/22/2007	Memo re Competitive Information Update	NSDE0473367	NSDE0473425	802
54	16	5/22/2007	Sel-Tronics E1000 D24 Hardware Evaluation Report	NSDE813499	NSDE813511	802
55	18	5/22/2007	IO ltr from Mats Ericson re European CRS Report	NSDE0559058	NSDE0559073	802
56	19	5/22/2007	IO ltr from Dan Daly re CeBit show	NSDE0634899	NSD0634902	802
57	22	5/22/2007	Memo from Linda Dilauro re Competitive Information	NSDE0473553	NSDE0473562	802
58	5A	5/22/2007	Group Objectives for 1991 Dan Daly	NSDE0119958	NSDE0119961	
59	319	5/23/2007	Witness Systems' Response to Intel submitted by WS, Inc.	WSDEPROD1759525	WSDEPROD1759672	
60	320	5/23/2007	Witness Systems, Inc. - Impact 360 - Archive Installation and Administration	N/A	N/A	802

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			Guide Release 7.7.1			
61	1	5/24/2007	Subpoena	N/A	N/A	401, 402
62	2	5/24/2007	Notice of Deposition of John Henits	N/A	N/A	401, 402
63	3	5/24/2007	Plaintiff's Supplemental Objections and Responses to Defendant Witness Systems, Inc.'s First Set of Interrogatories	N/A	N/A	
64	5	5/24/2007	U.S. Patent No. 5,396,371	WSNSDE0008692	WSNSDE0008932	
65	6	5/24/2007	Declaration and Power of Attorney for Endless Loop Voice Data Storage and Retrievable Apparatus and Method Thereof	WSNSDE0008648	WSNSDE0008650	106
66	7	5/24/2007	Racal Recorders Marketing Material	JONESDAY0054896	JONESDAY0054898	802, 901
67	8	5/24/2007	Press Release: Racal's Rapidax Voice Logging Recorder Offers Instant Message Recall of Multichannel Calls, Transmissions	JONESDAY0054899	JONESDAY0054902	802, 901
68	9	5/24/2007	Memo from Bob Paulson re APCO Convention: Tulsa - 08/91	JONESDAY0054747	JONESDAY0054748	802, 901
69	10	5/24/2007	Memo from John Gibson re CRS Financial Markets	JONESDAY0054750	JONESDAY0054753	802
70	11	5/24/2007	Memo from Charlen Malone re Ft. Worth 911 Account Background	NSDE501413	NSDE501414	802
71	12	5/24/2007	Handwritten notes regarding data buffer	JONESDAY0054036	JONESDAY0054036	802, 901
72	13	5/24/2007	Memo from Linda Haelsen re CRS RVP Meeting Summary	NSDE763708	NSDE763717	802
73	14	5/24/2007	Memo from Linda Dilauro re competitive information	NSDE0453687	NSDE0453702	802
74	15	5/24/2007	Dictaphone Product Development	JONESDAY0054591	JONESDAY0054635	
75	16	5/24/2007	Logger Architecture Assignments	JONESDAY0054637	JONESDAY0054707	
76	17	5/24/2007	Monthly Progress Report by Dan Daly	JONESDAY0054708	JONESDAY0054721	

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77	18	5/24/2007	Monthly Progress Report by Dan Daly	JONESDAY0054722	JONESDAY0054731	
78	19	5/24/2007	MDL Phase I	JONESDAY0054738	JONESDAY0054745	
79	20	5/24/2007	Memo from Linda Haelsen re CRS RVP Meeting Summary	JONESDAY0054754	JONESDAY0054765	
80	21	5/24/2007	Memo from Meg Greene re MDL LCD Product Specification	JONESDAY0054766	JONESDAY0054835	
81	22	5/24/2007	MDL 1st Release Specification Revision 2.2	JONESDAY0054836	JONESDAY0054888	
82	23	5/24/2007	Part 18 from MDL 1st Release Specification Revision 2.2	JONESDAY0054889	JONESDAY0054895	
83	25	5/24/2007	Declaration and Power of Attorney for Modular Digital Recording Logger	WSNSDE0008725	WSNSDE0008728	
84	26	5/24/2007	U.S. Patent No. 6,775,372	N/A	N/A	
85	27	5/24/2007	Declaration and Power of Attorney for System and Method for Multi-Stage Data Logging	WSNSDE0009659	WSNSDE0009660	106
86	28	5/24/2007	U.S. Patent No. 6,870,920	WSNSDE0010348	WSNSDE0010363	
87	29	5/24/2007	Declaration and Power of Attorney for System and Method for Multi-Stage Data Logging	WSNSDE0010216	WSNSDE0010217	106
88	30	5/24/2007	Defendant Witness Systems Inc.'s Notice of Deposition Pursuant to Red. R. Civ.P.30(b)(6) to Plaintiffs NICE Systems, Inc. and NICE Systems, Ltd.	N/A	N/A	401, 402, 403
89	31	5/24/2007	Settlement Agreement between Dictaphone and NICE Systems	NICE00422	NICE00455	403, 408
90	32	5/24/2007	Asset Purchase and Sale Agreement between Dictaphone Corporation and NICE Systems Inc.	NICE_DE_01135435	NICE_DE_01135510	401, 402, 403
91	33	5/24/2007	Disclosure Schedule Section 3.8 - Litigation	NICE_DE_01136265	NICE_DE_01136266	
92	34	5/24/2007	Disclosure Schedule Section 3.18(b0 - Material Claims Against Validity or Ownership of Business Intellectual Property	NICE_DE_01136276	NICE_DE_01136289	401, 402, 403
93	35	5/24/2007	Annex 2.2 - Excluded Assets	NICE_DE_01136107	NICE_DE_01136114	401, 402, 403

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94	36	5/24/2007	Patent Assignment between Dictaphone Corporation and NICE Systems, Inc.	LOOSABLLP001538	LOOSABLLP001544	
95	37	5/24/2007	Settlement Termination and Litigation Transfer Agreement	LOOSABLLP001432	LOOSABLLP001438	401, 402, 403
96	38	5/24/2007	Plaintiffs' Objections and Responses to Defendant Witness Systems, Inc.'s Third Set of Interrogatories	N/A	N/A	
97	39	5/24/2007	Plaintiffs' Supplemental Objections and Responses to Defendant Witness Systems, Inc.'s Third Set of Interrogatories	N/A	N/A	
98	140	5/30/2007	Notice of Deposition of Adtech - GESI, LLC	N/A	N/A	401, 402, 403
99	141	5/30/2007	Company Overview/Profile Marketing Materials	ADTECH000001	ADTECH000027	
100	142	5/30/2007	Adtech Solutions PowerPoint Presentation - Company background	WSDEPROD0042369	WSDEPROD0042382	
101	145	5/30/2007	Executed Master Distributor Agreement between Witness Systems, Inc. and Adtech	ADTECH000160	ADTECH000178	
102	149	5/30/2007	Witness Services Agreement made between Witness Systems Ltd. And Adtech International (Executed)	WSDEPROD3457732	WSDEPROD3457736	
103	151	5/30/2007	Adtech Quote for Homeland Security prepared by Michael Ackerman	ADTECH008362	ADTECH8366	
104	155	5/30/2007	Adtech Solutions Reseller Program Guide for Witness Systems	WSDEPROD0011063	WSDEPROD0011069	
105	156	5/30/2007	Witness Systems Express Turnkey Hardware Package (\$9,989) Lucent G3 Analog Package (12 ports)	WSDEPROD0045017	WSDEPROD0045019	
106	164	5/30/2007	ADTECH Solutions Quote for HP - 1000 seats prepared by Carol Carter/Michael Ackerman (\$320,523)	ADTECH007898	ADTECH007905	
107	165	5/30/2007	ADTECH Solutions Quote for Verizon prepared by Carol Carter	ADTECH007606	ADTECH007613	
108	166	5/30/2007	ADTECH Solutions Quote for Verizon/MCI prepared by Kevin Sullivan (\$19,470)	ADTECH004068	ADTECH004070	

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109	169	5/30/2007	ADTECH Solutions Budgetary Quote for TCL prepared by Yvonne Lee (\$36,655)	WSDEPROD0098459	WSDEPROD0098462	
110	170	5/30/2007	Executed Inventory Sales and Facilities Agreement between Witness Systems, Inc. and ADTECH Solutions	WSDEPROD3335233	WSDEPROD0005255	
111	1	5/31/2007	Subpoena	N/A	N/A	401, 402
112	2	5/31/2007	U.S. Patent No. 7,010,109	WSNSDE0010653	WSNSDE0010667	
113	3	5/31/2007	Provisional Application fro Systems & Methods of Recording by Conferencing	WSNSDE051300	WSNSDE051322	
114	4	5/31/2007	USPTO BIBDATA Sheet for Digital Recording of IP Based Distributed Switching Platform	WSNSDE0010499	WSNSDE0040549	
115	1	6/13/2007	Defendant Witness Systems Inc.'s Notice of Deposition Pursuant to Red. R. Civ.P.30(b)(6) to Plaintiffs NICE Systems, Inc. and NICE Systems, Ltd.	N/A	N/A	401, 402
116	2	6/13/2007	NICE Systems, Inc. and NICE Systems, Ltd.'s Objections to Witness Systems, Inc.'s Notice of Deposition Pursuant to Fed. R. Civ. P. 30(b)(6) to Plaintiffs NICE Systems, Inc. and NICE Systems, Ltd.	N/A	N/A	
117	3	6/13/2007	E-mail to Daniel Kent re NICE v. Witness: Eyal Rudnik 30(b)(6) Designee	N/A	N/A	401, 402, 403
118	5	6/13/2007	NICE Patent Policy & Conduct Guidelines	NICE_DE_01137983	NICE_DE_01137999	401, 402, 403
119	7	6/13/2007	Control of Documents Procedure	N/A	N/A	401, 402, 403
120	9	6/13/2007	NICE Presentation - Intellectual Property A leverage for business in the high tech industry prepared by Moty Cory	NICE_DE_01138012	NICE_DE_01138039	802
121	10	6/13/2007	NICE Presentation - Roles of Intellectual property Director prepared by Moty Cory	NICE_DE_01138040	NICE_DE_01138058	802
122	11	6/13/2007	Color slides of NICE Perform Applications Suite Version 9.0, NICE Perform Compliance Suite version 9.0	NSDE004120	NSDE004122	

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			and NICE Perform Applications Suite Version 9.10			
123	12	6/13/2007	Label Product: Voice Over IP Logger Trade Name: NiceLog Model: NL-2000	STS017145	STS017145	
124	13	6/13/2007	Table/Graphical data re World-wide Voice Loggers Markets	NSDE133202	NSDE133281	
125	16	6/13/2007	NICE Systems Industry Awards	NICE_DE_01138059	NICE_DE_01138061	
126	259	6/29/2007	2000 Witness Systems Annual Report - Optimizing Customer Relationships	WSDEPROD1970598	WSDEPROD1970660	802
127	41	8/21/2007	Plaintiff's Supplemental Objections and Responses to Defendant Witness Systems, Inc.'s Second Set of Interrogatories	N/A	N/A	
128	42	8/21/2007	Plaintiff's Third Supplemental Objections and Response to Defendants Witness System, Inc.'s Interrogatory No. 18	N/A	N/A	
129	43	8/21/2007	U.S. Patent No. 5,396,371	WSNSDE0008692	WSNSDE0008699	
130	45	8/21/2007	Logger Architecture Assignments	NSDE097535	NSDE097629	
131	46	8/21/2007	Monthly Progress Report by D. Daly	NICE_DE_01137634 (DICT0058179)	NICE_DE_01137642 (DICT0058187)	
132	47	8/21/2007	Invention Disclosure - Modular Digital Logger - Record/Play System Design	NICE_DE_01137675	NICE_DE_01137679	
133	48	8/21/2007	Modular Digital System (MDS) Architectural Design Review	NSDE471405	NSDE471423	
134	49	8/21/2007	Dictaphone Invention Disclosure for Modular Digital System	NICE_DE_01137643	NICE_DE_01137643	
135	50	8/21/2007	U.S. Patent No. 5,274,738	WSNSDE0008620	WSNSDE0008625	
136	51	8/21/2007	Dictaphone Invention Disclosure for Modular Digital Logger - Digital Audio Tape Format	NICE_DE_01137663	NICE_DE_01137674	
137	52	8/21/2007	Dictaphone CRS Next Generation: Architecture Required for Networked Communications Recording Systems	NSDE6012514	NSDE6012536	

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			Version 1.0			
138	54	8/21/2007	Low End Recording System 1000 System Requirements Functional Specification Company Confidential Revision 1.0	NSDE294780	NSDE294834	
139	55	8/21/2007	DOS EQUIS - CTI Server Design Version 0.2 prepared by David Glowny	NSDE409563	NSDE409584	
140	56	8/21/2007	U.S. Patent No. 6,249,570	WSNSDE0009192	WSNSDE0009254	
141	57	8/21/2007	Letter from Chanah Brenenson to Ognjan Shentov enclosing NICE's mediation memorandum	JONESDAY0021192	JONESDAY0021212	401, 402, 403, 802
142	58	8/21/2007	U.S. Patent No. 6,785,370	WSNSDE0010104	WSNSDE0010168	
143	59	8/21/2007	Second Amendment to License Agreement between Dictaphone Corporation and Witness Systems, Inc.	NSDE727858	NSDE727908	
144	60	8/21/2007	Research Note entitled "Dictaphone Good Channels; struggling with QA Products"	JONESDAY0014803 NICE245475	JONESDAY0014804 NICE245476	401, 402, 403
145	61	8/21/2007	Letter from DAKent to Drayton re additional response to Interrogatory No. 14	N/A	N/A	
146	62	8/21/2007	Agenda - Growth Development Strategy	DICT0100706	DICT0100809	802
147	63	8/21/2007	Dictaphone CRS Marketing the LF Series commercial name "Galileo" Marketing Plan prepared by John Cibulay	NSDE750318	NSDE750373	
148	65	8/21/2007	Press Release: "Dictaphone Freedom Recording System Named Product of the Year" (Contactcenterworld.com web page)	NICE_DE_01140064	NICE_DE_00140065	
149	1	9/20/2007	Defendant Witness Systems Inc.'s Notice of Deposition Pursuant to Red. R. Civ.P.30(b)(6) to Plaintiffs NICE Systems, Inc. and NICE Systems, Ltd.	N/A	N/A	401, 402, 403

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150	2	9/20/2007	Letter from Drayton to Kent re production of electronically stored financial data and designations of Rosner and Rozenblat for deposition on financial topics	N/A	N/A	401, 402, 403
151	3	9/20/2007	NICE Systems Ltd. Control of Records Procedure	NICE00407	NICE00410	401, 402, 403
152	4	9/20/2007	NICE Systems Ltd. Record Retention Policy Authored by L. Hanover 04/2004	NICE_DE_01138009	NICE_DE_01138011	401, 402, 403
153	5	9/20/2007	NICE Systems Ltd. Control of Records Procedure	NICE_DE_01138005	NICE_DE_01138008	401, 402, 403
154	7	9/20/2007	NICE Systems - Industry Awards	NICE_DE_00408245	NICE_DE_00408245	
155	8	9/20/2007	(NICE Financial Data) Chart identifying NICE lost opportunities	NICE_DE_01136604	NICE_DE_01138061	
156	1	9/21/2007	Letter from Graubart to Drayton re production of relevant NICE financial data	N/A	N/A	401, 402, 403
157	28	9/21/2007	Rebuttal Expert Report of Thomas W. Britven	N/A	N/A	401, 402, 403, 702, 802
158	30	9/21/2007	(Financial) Main Points 1997	NSDE132042	NSDE132068	802
159	31	9/21/2007	Gross Margin Reports - Q2/98 NiceLog, NiceCall & NiceCLS for Q2/97-Q2/98	NSDE131980	NSDE131966	802
160	32	9/21/2007	1998 Analysis Reports - CTI Sales	NSDE132087	NSDE132115	802
161	33	9/21/2007	Form 20-F Nice Systems, Ltd - NICE (period: December 31, 2005)	STS033196	STS033479	802
162	34	9/21/2007	Bar graph identifying forecasting data	NICE_DE_00982360	NICE_DE_00982365	802
163	36	9/21/2007	PowerPoint identifying Sales for VoIP Logger	STS026592	STS026614	802
164	DX 6	8/28/2007	License Agreement between Netopia, Inc and Nice Systems, Ltd.	NICE00331 (NET000067)	NICE00351	
165	DX 7	8/28/2007	Draft Software License Agreement between Funk Software and Dictaphone	NICE25288	NICE25315	802, 901
166	DX 44	12/14/2006	Amendment to License Agreement between NICE and Netopia dated 2/25/04	NET000001	NET000023	401, 402, 403, 701, 802

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167			NICE's Response to Witness 1st Set of Interrogatories	N/A	N/A	802, 901
168			Witness Systems' Responses to NICE's First Set of Interrogatories	N/A	N/A	802, 901
169			Deposition of Kenneth C. Pohlmann 10/29/02 (in Dictaphone v. NICE)	NSDE 017262	NSDE 017345	802, 901
170			Expert Report of John T. Goolkasian (in Dictaphone v. NICE)	NSDE008487	NSDE008505	802, 901
171			J. Saltzman dated February 1992 that specifically mentioned Racal Rapidax and its use of hard drives	JONESDAY0054749	JONESDAY0054753	802, 901
172			Dictaphone memorandum titled "CRS RVP meeting summary" dated Nov. 1992	JONESDAY0054754	JONESDAY0054765	802, 901
173			NICE's 2nd Amd Answer and Counterclaims and (in Dictaphone v. NICE)	NSDE 020485	NSDE020492	802, 901
174			April 1999, Dictaphone to Eyretel undated letter re Infringement of the '371 Patent	WSNSDE061242	WSNSDE061242	802, 901
175			Seven letters, Dictaphone and Eyretel correspondence re infringement claims and the possibility of Eyretel licensing Dictaphone technology covered by the '371 and '005 Patents	WSNSDE061243	WSNSDE061252	401, 402, 403, 702, 802
176			Witness Systems, Inc. Form 10-K filed Mar. 15, 2004	N/A	N/A	802
177			NICE 2nd Supp. Obj. and Resp. to WS Rog. 13 6/28/07	N/A	N/A	802
178			Witness Systems, Inc., Form 10-K filed Apr. 02, 2007	N/A	N/A	

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179			U.S. Patent No. 5,440,624, priority date of Nov. 10, 1992, and issue date of Aug. 8, 1995	WSNSDE0004554	WSNSDE0004570	
180			U.S. Patent No. 6,298,129, priority date of Mar. 11, 1998, and issue date of Oct. 2, 2001	WSNSDE0006185	WSNSDE0006195	802
181			U.S. Patent No. 6,668,044 priority date of Jul. 19, 2000, and issue date of Dec. 23, 2003	WSNSDE0006789	WSNSDE0006803	
182			PCT WO99/46702, priority date of Mar. 13, 1998, and publication date of Sep. 16, 1999	WSNSDE0008501	WSNSDE0008540	
183			U.S. Patent Pub. No. 2001/0043697, priority date of May 11, 1998, and publication date of Nov. 22, 2001	WSNSDE0000860	WSNSDE0000873	
184			U.S. Patent No. 5,048,079, priority date of Aug. 10, 1990, and issue date of Sep. 10, 1991	WSNSDE0003251	WSNSDE0003272	
185			U.S. Patent No. 6,002,753, priority date of Oct. 5, 1994, and issue date of Dec. 14, 1999	WSNSDE0005882	WSNSDE0005925	
186			U.S. Patent No. 5,559,875, priority date of Jul. 31, 1995, and issue date of Sep. 24, 1996	WSNSDE0004992	WSNSDE0005027	802
187			U.S. Patent No. 5,982, 857, priority date of Oct. 17, 1994, and issue date of Nov. 9, 1999	WSNSDE0005823	WSNSDE0005837	802, 901
188			Blue Cross Blue Shield Eclipse Integration, sold or offered for sale in the U.S. before June 8, 1999			
189			“Blue Cross Blue Shield User Guide” dated January 29, 1998	WSNSDE0012983	WSNSDE0012992	802, 901
190			“Application Development Guide - Blue Cross / Blue Shield Eclipse Project Eclipse Modification and Design” dated November 25, 1997	WSNSDE0012967	WSNSDE0012982	802
191			“Tracking Agent Id through Inter-Site Call Transfers”	WSNSDE0012993	WSNSDE0012994	802

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192			"E1000 for Windows User Guide" dated July 1997	WSNSDE0011276	WSNSDE0011346	802
193			Equiserve Recording Proposal presented in the U.S. on May 5, 1999, which before June 8, 1999	WSNSDE013106	WSNSDE013106	802
194			"E-Ware Replay-User Guide" dated November 1998	WSNSDE011798	WSNSDE011844	802
195			"Unify System Managers Guide" dated August 1996	WSNSDE012044	WSNSDE012070	802, not produced
196			Cannon MediaStore/Unify/Eware Integration, sold in U.S. before June 8, 1998			802, not produced
197			"Proposal for a Quality Monitoring / Agent Evaluation System," dated 8/20/98	WSNSDE013060	WSNSDE013066	401, 402, 802
198			"Cannon ITS Technology Services Incorporated Quality Monitoring Functionality Design," dated 11/18/98	WSNSDE013035	WSNSDE013059	403, 802
199			Report to the Board of Directors, June 1997	WSNSDEPROD481700 5	WSNSDEPROD481700 07	
200			"E1000/E500 Recorder: Engineer Familiarisation"	WSNSDE0015161	WSNSDE0015198	
201			Article "Digital Audio Tape For Data Storage", by Tan & Vermeuleun, IEEE Spectrum, October, 1989	WSNSDE0010785	WSNSDE0010789	802
202			"Racal's 'Rapidax' Voice Logging Recorders Offers Instant Message Recall of Multichannel Calls, Transmissions"	NSDE008300	NSDE008302	802
203			"Rapidax Access Voice Logging Recorder"	NSDE008312	NSDE008319	802
204			"Rapidax Instant Call Recorder"	NSDE008305	NSDE008309	401, 402, 403, 802
205			"Rapidax in Surveillance and Security Monitoring"	NSDE008310	NSDE008311	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
206			“Operator’s Manual” (Excerpt)	NSDE008320	NSDE008324	
207			RACAL Recorders Operator’s Manual	NSDE 305200	NSDE 305381	401, 402, 403, 701, 802
208			“System Manager’s Manual”	NSDE008325	NSDE008340	Full version at DTX 1912 NSDE305382-799
209			“Rapidax Tape Archive and System Network.”	NSDE008303	NSDE008304	
210			Deposition of Andrew Jackson in Dictaphone Corp. vs. Nice Systems, Ltd., dated June 21, 2002, Civil Action 3:00CV1143.	NSDE008273	NSDE008299	
211			Expert Report of Ken Pohlman on the Invalidity of U.S. Patent No. 5,396,371 in Dictaphone Corp. vs. Nice Systems, Ltd., dated June 21, 2002, Civil Action 3:00CV1143 (Dictaphone v. NICE)	NSDE008447	NSDE008468	
212			R[aj]cal Recorders, Inc.; “R[aj]cal Adds Remote ‘Replay Over LAN’ to Wordnet Voice – Logging Recorder,” dated June 17, 1996	MERC013540	MERC013540	802, 901
213			“Racal ‘Worldnet’ – Second Generation of World’s Best Selling Voice-Logging Recorder,” June 28, 1995.	NSDE 004715	NSDE 004716	802, 901
214			U.S. Patent No. 6,233,318 to Picard et al., filed Nov. 5, 1996.	WSNSDE063951	WSNSDE063974	
215			“Access Web TM. Internet Messaging Application,” BostonTechnology.com, dated Dec. 27, 1996	WSNSDE063975	WSNSDE063977	401, 402, 802
216			“Boston Technology Completes The Connection! Adds Internet Support To Its Public Network Services,” PR Newswire, dated Nov. 30, 1995	WSNSDE063946	WSNSDE063950	401, 402, 802
217			U.S. Publication No. 2001/0043697 to Cox, published November 22, 2001, filed on May 11, 1998	WSNSDE0000874	WSNSDE0000894	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
218			Parnes et al, "mMOD: the multicast Media-on-Demand system," dated March 6, 1997	WSISTS065463	WSISTS065468	802
219			United States Patent No. 4,891,835, to Leung, filed on April 30, 1986, issued on June 2, 1990	WSNSDE0003055	WSNSDE0003080	802
220			Deposition of Chris Blair in Dictaphone Corp. vs. Nice Systems, Ltd., dated June 21, 2002, Civil Action 3:00CV1143	WSNSDE057630	WSNSDE057667	802
221			European Patent Publication 0372894, to Koizumi, published on June 13, 1990, filed on December 5, 1989.	WSNSDE0000277	WSNSDE0000293	802
222			Mediation Brief, Analysis of Prior Art Which Anticipates or Renders Obvious the Claims of U.S. Patent No. 5,396,371, in Dictaphone Corporation vs. Mercom Systems, Inc., Civil Action 3:00CV1143	LOOSABLLP 002292	LOOSABLLP 002302	403, 802
223			United States Patent No. 4,375,083, to Maxemchuk, issued on February 22, 1983.	LOOSABLLP 002332	LOOSABLLP 002355	802
224			Japanese Publication No. S62-20460, to Hirokawa, published on January 29, 1987.	LOOSABLLP 002357	LOOSABLLP 002364	802
225			"Memory Space Allocation of Messages in Voice-Mail," IBM Technical Disclosure Bulletin, published in July 1987	LOOSABLLP 002366	LOOSABLLP 002367	802
226			"A Magnetic Storage Disk Based Digital Audio Recording, Editing and Processing System," presented to the public at the 83rd AES Corporation on October 16-19, 1987.	LOOSABLLP 002381	LOOSABLLP 002398	802
227			"A Flexible Digital Sound-Editing Program for Minicomputer Systems," presented to the public at the 68th Convention of the Audio Engineering Society in Hamburg, German, Journal of Audio Engineering Society, on March 17-20, 1981.	NSDE008479	NSDE008486	802

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
228			NICE's Markman Brief in Dictaphone Corporation vs. Nice Systems, Ltd., dated June 21, 2002, Civil Action 3:00CV1143	NSDE014561	NSDE014603	802
229			Magnasync Digital Voice Logger, sold in the U.S. as of at least October, 1992	JONESDAY0021219	JONESDAY0021224	802
230			United States Patent No. 4,841,574, issued June 20, 1989 to Pham et al., filed Oct. 11, 1985	WSNSDE064612	WSNSDE064623	802
231			United States Patent No. 4,523,055, issued June 11, 1985 to Hohl et al., filed November 25, 1983.	WSNSDE064653	WSNSDE064676	802
232			U.S. Patent No. 6,600,821 to Chan, et al., issued July 29, 2003, filed October 26, 1999	WSNSDE0006684	WSNSDE0006694	802
233			US Patent 5,396,371	WSNSDE0008692	WSNSDE0008699	802
234			File History of US Patent 5,396,371	WSNSDE0008626	WSNSDE0008691	802
235			File History US Patent 6249570	WSNSDE0008933	WSNSDE0009191	
236			File History of US Patent 6,728,345	WSNSDE0009255	WSNSDE0009546	
237			US Patent 6,775,372	WSNSDE0009798	WSNSDE0009813	
238			File History of US Patent 6,775,372	WSNSDE0009612	WSNSDE0009797	
239			File History of US Patent 6785370	WSNSDE0009814	WSNSDE0010103	
240			US Patent 6,870,920	WSNSDE0010348	WSNSDE0010363	
241			File History of US Patent 6,870,920	WSNSDE0010169	WSNSDE0010347	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
242			US Patent 7,010,109	WSNSDE0010653	WSNSDE0010667	
243			09/328,299 Declaration and POA	WSNSDE009133	WSNSDE009135	106
244			Attachment IV - Dictaphone CRS 94 - 00	NSDE0009107-9		401, 402, 403, 702, 802
245			DataMonitor Q3 1999	NICE210665	NICE210692	401, 402, 403, 702, 802
246			CJ Elias-West Deposition (in Dictaphone v. NICE)	NSDE013363	NSDE013374	401, 402, 403, 802
247			CJ Elias-West Deposition (in Dictaphone v. NICE) 12/5/01	FG00003439	FG00003477	
248			Letter to West from Lindvall enclosing subpoena	NSDE028482	NSDE028485	
249			Expert Report of Thomas Britven September 2002 (in Dictaphone v. NICE)	NSDE0008972	NSDE0009089	
250			Supplemental Expert Report of John C. Jarosz 7/22/02 (in Dictaphone v. NICE)	NSDE0009942	NSDE010130	
251			Deposition of Victor Milenkovic 10/11/02 (in Dictaphone v. NICE)	JONESDAY0021069	JONESDAY0021161	
252			Email 9/14/05 Shamir to Yosef RE Call Recording Options	NS098511	NS098511	
253			Redacted Business Risk Assessment	WSDEPROD0262738	WSDEPROD0262739	802
254			NICE Systems Press Release: NICE Systems Delivers a Record Second Quarter with 35.3% Revenue Growth	NICE WEBSITE		802
255			NICE Systems Press Release: Record Results for Third Quarter 2006 Reported by NICE Systems - Revenues Reach 112.2 Million	NICE WEBSITE		802
256			Eyretel Network Solutions	WSNSDE012517	WSNSDE012536	802
257			Memo re Competitive Analysis	NSDE473553	NSDE473562	

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258			5th NovemberOctober 2001_Eyretel MediaStoreIP 3.1_V.Issue 1.	WSDEPROD1543259		
259			Avaya Application Solutions Deployment Guide	WSNSDE036972		
260			Avaya Search and Replay Instructions	WSISTS032169		
261			Avaya Witness Contactstore for Communication Manager R7.3 System Admin Guide	WSDEPROD1880866		
262			Avaya Witness Contactstore for Communication Manager R 7.7 Planning Installation & Admin	WSDEPROD0264962		
263			Contact Manager Detailed Design Specification	WSDEPROD0538354		
264			eWare Tech Guide version 7.1	WSDEPROD0777008		
265			Eyretel eWare Replay User Guide -	WSDEPROD4065718		
266			Eyretel eWare System Admin Guide 7.1	WSDEPROD0777727		
267			Eyretel Technical Note ETN326 eWare 2.2 Database Structure -	WSDEPROD4038772		
268			WITS Contactstore IP System Administration Guide R 7.4	WSDEPROD1526980		
269			WITS eQuality Balance 6.5.4 Server Infrastructure Guide	WSDEPROD0916901		
270			WITS eQuality BalanceAdministration Guide R 5.4	WSDEPROD1605595		
271			WITS eQuality ContactStore Plus 6.5.4 Configuration Guide	WSDEPROD0916995		

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
272			WITS eQuality ContactStore Plus 6.5.4 Overview Guide	WSDEPROD0917117		
273			WITS eQuality ContactStore System Admin Guide	WSDEPROD0776873		
274			WITS eQuality ContactStore User Guide	WSDEPROD0776052		
275			WITS eQuality Contactstore	WSDEPROD0775907		
276			WITS VIEWER User Guide R7.7.1 - -	WSDEPROD3308365		
277			WITS VIEWER User Guide Release 7.6 -	WSDEPROD2751845		
278			Balance 6 Database Schema	WSDEPROD0268240		
279			Technical Diagram EQB64 352 Display 1	WSDEPROD0268468	WSDEPROD0268474	
280			Admin Guide for Avaya Comm Mngr	WSNDE026087	WSNDE027848	
281			Avaya App Solutions_IP Tele Deployment Guide	WSNDE036972	WSNDE037463	
282			BDR Server Term Definitions	WSDEPROD1514996	WSDEPROD1514999	
283			Build 19 Server Doc Catalog	WSDEPROD2698535	WSDEPROD2698543	
284			Call Mngr Architec Design Spec	WSDEPROD1515000	WSDEPROD1515028	
285			Comm Mngr Rec_Architec Summ and Opt	WSDEPROD3533230	WSDEPROD3533256	
286			Contact Attributes Usage Spec.dpf	WSDEPROD1969770	WSDEPROD1969794	
287			Contact Attributes Usage Spec_2	WSDEPROD4299667	WSDEPROD4299691	
288			Contact Mngr Detailed Design Spec	WSDEPROD0538354	WSDEPROD0538401	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
289			EQB Release 6 Contact Recording and Replay Overview	WSDEPROD0707284	WSDEPROD0707285	
290			ContactStore and eQBalance	WSDEPROD0698206	WSDEPROD0698219	
291			ContactStore CSIP	WSDEPROD1954382	WSDEPROD1954415	
292			ContactStore IP Multiple NIC Card Supp	WSISTS5025867	WSISTS5025877	
293			Data Dic eQBalance 7.6	WSDEPROD3247585	WSDEPROD3247681	
294			DD.01_BDR Contact Mngr Detailed Design	WSDEPROD1969687	WSDEPROD1969727	
295			Design Spec_EDS227_Call Stitching	WSDEPROD1279956	WSDEPROD1279972	
296			E1000 for Windows Sys Mngr Guide	WSNSDE014697	WSNSDE014762	
297			E1000 for Windows User Guide	WSDEPROD1298739	WSDEPROD1298806	
298			Eclipse2 Sys Mngr Guide	WSDEPROD4892698	WSDEPROD4892773	
299			Eclipse2_Sys Managers Guide	BCBS0290	BCBS0361	802, 901
300			Eclipse Sys Mngr Guide	WSDEPROD1299502	WSDEPROD1299560	802, 901
301			Engineering Design Spec EDS_207	WSDEPROD4028277	WSDEPROD4028300	802, 901
302			Enhanced Screen Capture Functional Spec	WSDEPROD3294059	WSDEPROD3294078	802
303			eQB R5 Database Info	WSDEPROD0133401	WSDEPROD0133408	802
304			Equality 6.x Runtime Component Deployment	WSDEPROD0535630	WSDEPROD0535643	802
305			eQuality Balance 6.4 Advanced Server Infrastructure	WSDEPROD0129504	WSDEPROD0129645	
306			eQuality Balance Latency Analysis	WSDEPROD0719733	WSDEPROD0719750	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
307			eQuality Balance R6.3.1 System Architecture Overview	WSDEPROD0535728	WSDEPROD0535799	802
308			eQuality Balance R6_4 Sys Architecture Overview	WSDEPROD0536266	WSDEPROD0536343	
309			eQuality Balance_Server Infrastructure Guide	WSDEPROD1606078	WSDEPROD1606129	802
310			eQuality ContactStore PLUS 2.0_Overview Guide.pdf	WSDEPROD3536017	WSDEPROD3536026	
311			eQuality Evaluations Architec Design Spec	WSDEPROD1796293	WSDEPROD1796302	802
312			ETN223_MediaStore Tech Spec	WSDEPROD3545459	WSDEPROD3545468	403, 802
313			ETN223_MediaStore Tech Spec_2	WSDEPROD4037741	WSDEPROD4037753	802
314			E-Ware2 Sys Guide	WSDEPROD4064727	WSDEPROD4064833	802
315			e-Ware 1-0-015 Database Engineer Familiarisation	WSDEPROD1329044	WSDEPROD1329100	802
316			E-Ware Replay User Guide	WSDEPROD1309424	WSDEPROD1309471	802
317			E-Ware Replay User Guide_2	BCBS0622	BCBS0689	
318			E-Ware Sys Admin Guide	BCBS0473	BCBS0621	
319			E-Ware Sys Manual	BCBS0383	BCBS0472	
320			eWare Tech Guide	WSDEPROD1310151	WSDEPROD1310230	
321			eWare	WSDEPROD0776261	WSDEPROD0776428	802
322			Eyretel App Note_EAN 001_Call Stitching	WSDEPROD1277119	WSDEPROD1277124	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
323			Eyretel eWare 6.0 Database Structure	WSDEPROD0613032	WSDEPROD0613034	802
324			Eyretel eWare 6.0 Database Structure	WSDEPROD0613032	WSDEPROD0613034	802
325			Hardware Descrip and Ref for Avaya Comm Mngr	WSNSDE036532	WSNSDE036971	802
326			How WEPS Works	WSDEPROD151588	WSDEPROD1515201	802
327			Installing and Config the Avaya S8400 Media Server	WSNSDE027849	WSNSDE027928	802
328			Land Rover Recorder_Revision His	WSDEPROD1953946	WSDEPROD1953986	802
329			Management Tool	WSDEPROD2521640	WSDEPROD2521677	802
330			Media Store Digi Voice Recorder_Installation Guide	WSDEPROD1313860	WSDEPROD1313927	802
331			Mediastore_Engineer Familiarisatin	WSDEPROD1329766	WSDEPROD1329852	802
332			Overview for the Avaya G250 and G350	WSNSDE024035	WSNSDE024110	802
333			Overview of Avaya Comm Mngr	WSNSDE025815	WSMSDE026086	802
334			Planning_Installation and Admin Guide	WSDEPROD0265228	WSDEPROD0265501	802
335			R6_4_x Doc Catalog	WSDEPROD05355959	WSDEPROD5355965	802
336			Recorders and Calls	WSDEPROD2396147	WSDEPROD2396149	802
337			Release Doc Unit Server	WSDEPROD4014906	WSDEPROD4014936	
338			Release Doc Unit Server_2	WSDEPROD4015113	WSDEPROD4015143	
339			Release Doc_E-Ware Replay	WSDEPROD4014871	WSDEPROD4014888	
340			Release Doc_E-Ware Replay_2	WSNSDE062571	WSNSDE062587	
341			Revision History	WSDEPROD0534986	WSDEPROD0535019	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
342			Witness Systems Search and Replay Guide Ver 7.7	WSDEPROD3156864	WSDEPROD3157069	
343			Software Architec Doc	WSDEPROD1126614	WSDEPROD1126675	
344			Software Architec_Revision Hist	WSDEPROD0579244	WSDEPROD0579302	
345			Software Architec_Revision Hist_2	WSDEPROD1516434	WSDEPROD1516497	802
346			Software Architec_Revision Hist_3	WSDEPROD1516606	WSDEPROD1516669	802
347			Software Architec_Revision Hist_4	WSDEPROD1941012	WSDEPROD1941034	802
348			Successful 6.4 Startup and Recording Log	WSDEPROD1515315	WSDEPROD1515393	802
349			Table	WSDEPROD0268165	WSDEPROD0268239	802
350			Table	WSDEPROD0268342	WSDEPROD0268395	802
351			Table	WSDEPROD0268396	WSDEPROD0268466	802
352			Tech Note_ETN015_E-Ware Database Structure	WSDEPROD1282555	WSDEPROD1282563	802
353			Tech Note_ETN200_E-Ware 2 Database Structure	WSDEPROD3545320	WSDEPROD3545340	802
354			Tech Note_ETN200_E-Ware Database Structure	WSDEPROD1282764	WSDEPROD1282785	802
355			Tech Note_ETN581_MediaStore Disk Structure	WSDEPROD4041139	WSDEPROD4041143	802
356			Tech Note_ETN635_Conf Calls VoIP and eWare	WSDEPROD1287425	WSDEPROD1287428	802
357			Tech Note_ETN787_MediaStore Metadata	WSDEPROD1288835	WSDEPROD1288844	802
358			Test Plan_VoIP Call Stitching	WSDEPROD1289305	WSDEPROD1289311	802
359			Unify Sys Mngrs Guide	WSDEPROD1326680	WSDEPROD1326707	802
360			Voice Content Load Testing	WSDEPROD0204780	WSDEPROD0204793	802

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361			Witness 5.11 Data Model	WSDEPROD1650779	WSDEPROD1650800	
362			Witness Call Mngr Model	WSDEPROD1515060	WSDEPROD1515089	802
363			Workplace Mngr Architec Design Spec	WSDEPROD0719753	WSDEPROD0719787	802
364			WS Cert Prgm_Server Infrast Manual	WSDEPROD2390574	WSDEPROD2390653	802
365			WS Display_Main Subject Area	WSDEPROD3506291	WSDEPROD3506291	802
366			WS EQBalance 7.6_Database Schema	WSDEPROD3247489	WSDEPROD3247500	802
367			WS Quality Monitoring 7.7_Database Schema	WSDEPROD1969283	WSDEPROD1969386	802
368			371 Coinventor Goane Deposition 10/15/02 Excerpt (in Dictaphone v NICE)	NSDE0021102		802
369			2007-03-02 WS Resp to NICE 2nd Rogs	N/A	N/A	
370			2007-03-21 WS 2nd Amended Answer	N/A	N/A	802, 901
371			2007-05-04 Ltr to Drayton fr Kent providing addtl info to WS prior resp Interrogatory 14	N/A	N/A	802, 901
372			2007-06-28 NICE 2nd Supp Objn and Response to WS Rog 13	N/A	N/A	802, 901
373			Racal Recorders System Manager's Manual	NSDE305382	NSDE305799	802, 901
374			2007-12-5 Ltr to Graubert fr Maher re Town of Arlington subpoena	ARL000001	ARL000001	802
375			NICE Memo Supporting LROpposition to Motion to Dismiss Unenforceability (in Dictaphone v NICE)	NSDE019838	NSDE019842	802
376			NICE Memo Supporting Opposition to Motion Dismiss Unenforceability	NSDE019815	NSDE019836	802
377			2005 Tern Systems voice data Recording report over 600 pages	WSISTS052049		802

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
378			NICE Bid Ltr to Witness 1-24-07	WSNSDE065707		802
379			U.S. Patent Application Serial No. 09/328,298	N/A	N/A	
380			U.S. Patent Application Serial No.09/328,295	N/A	N/A	
381			U.S. Patent Application Serial No. 09/328,294 ('370 Patent)	N/A	N/A	
382			U.S. Patent Application Serial No. 09/876,978	N/A	N/A	
383			U.S. Patent Application Serial No. 09/867,954	N/A	N/A	
384			U.S. Patent Application Serial No. 10/111,767	N/A	N/A	
385			U.S. Patent Application Serial No. 60/228,124	N/A	N/A	
386			File History of PCT Application Serial No. PCT/IL01/00805	N/A	N/A	
387			File History of PCT Application Serial No. PCT/US00/15748	N/A	N/A	
388			E1000 Digital Voice Recorder User Guide	BCBS 0160		
389			Purchase Agreement between Blue Cross Blue Shield of Georgia and Seltronics Eyretel, Inc.	WSNSDE0047302		401, 402, 802
390			BCBS Notes & Action Plan Points from Meeting at SEI< Landover - 11/6/97	WSNSDE0048143		401, 402

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391			Eyretel Product History - July 2001	WSNSDE015531		401, 402, 802
392			Development Department Report to the Board of Directors, Feb 1998 by Damian Smith	WSDEPROD4817019		401, 402, 403, 701, 802
393			CTI-Server Engineer Familiarisation Training Module Issue 1.0	WSDEPROD1331176		
394			Eyretel Digital Interface Card Issue 1 Installation Guide	BCBS 0210		
395			E-Ware Replay Help	BCBS 0362		
396			E 1000 Digital Voice Recorder User Guide	BCBS 0064		
397			NICE PPT Presentation: Winning with NICE- CMAPI	STS 021225	STS 021283	
398			1/11/99 Letter from J. Diamante at Penny & Edmonds to K. Alexander at Comverse re licensing of Dictaphone Technology	NSDE 020901		
399			5/26/99 Letter from J. Diamante at Penny & Edmonds to K. Rubenstein, Esq. re licensing of Dictaphone Technology	N/A	N/A	
400			5/6/02 Deposition of Ron Elwell (in Dictaphone v. NICE)	JONESDAY0017248	JONESDAY0017331	401, 402, 403, 701, 802
401			5/29/02 Deposition of Daniel Hart (in Dictaphone v. NICE)	JONESDAY0022077	JONESDAY0022103	401, 402, 403, 701, 802
402			OEM License Agreement between Witness Systems and CallMiner dated 2/2/04	WITSDE0010405	WITSDE0010417	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
403			Technology Advisory Counsel Meeting Minutes dated 6/6/05 (PX 700)	WSDEPROD2458277	WSDEPROD2458281	
404			Impact 360 Product Suite; Record and Replay System Architecture Draft 1 (PX 701)	WSDEPROD0536527	WSDEPROD0536548	
405			Witness Systems Software Architecture dated 12/24/04	WSDEPROD0579244	WSDEPROD0579302	
406			Witness Systems Instructor Guide Compliance Recorded 7.7 Installation and Admin Course March 01: Overview and Infrastructure (PX 703)	WSDEPROD2475147	WSDEPROD2475250	
407			Witness Contact Store 7.7 for Avaya Communication Manager CSCM Technical Note: CSCM 7.7 for Quality Monitoring 7.7.1 (formerly Equality Balance) (PX 704)	N/A	N/A	
408			Witness Systems Impact 360 Architectural Roadmap August 2006 Presentation by Dan Spohrer (PX 705)	WSDEPROD1521018	WSDEPROD1521028	
409			Witness Systems 7.8 Recorder Secure Data In Transit With SSL Software Architecture August 28, 2006	WSDEPROD3182549	WSDEPROD3182579	
410			License to Use Aurix Audio Mind and Software dated 4/19/05 between Aurix and RETELL	WSDEPROD1505443	WSDEPROD1505455	
411			OEM License Agreement between Aurix and Witness Systems dated 8/3/06	WITSDE0010114	WITSDE0010151	
412			Data Monitor Recording Industry Quarterly January 2006 (Q3 2005)	WSNICE027302	WSNICE027347	
413			Data Monitor Recording Industry Quarterly November 2005 (Q2 2005)	WSISTS049779	WSISTS049824	
414			Data Monitor Recording Industry Quarterly November 2002 (Q2 2002)	STS 019094	STS 0191963	

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415			Data Monitor Recording Industry Quarterly April 2004 (Q3 2003)	WSDEPROD0222459	WSDEPROD0222489	
416			3/1/99 Letter from J. Dimante to P. Robinson, Esq. re Licensing of Dictaphone Technology	JONESDAY0046540	JONESDAY0046541	401, 402, 403, 802
417			3/5/99 Letter from J. Dimante, Esq. to A. J. McShane re Licensing of Dictaphone Technology	JONESDAY0052821	JONESDAY0052822	401, 402, 403, 802
418			NICE Presentation Competing against ... Witness Systems	NICE16848	NICE16863	802
419			NICE Systems, Ltd. Form 20-F filed 6/29/05 for period ending 12/31/04	N/A	N/A	802
420			NICE Systems, Ltd. Form 20-F filed 5/16/06 for period ending 12/31/05	N/A	N/A	
421			1/17/96 Dictaphone Letter to Witness Systems Attn. Kirk Knous	NICE18847	NICE18851	
422			Insight Agreement dated 3/12/96	NICE22753	NICE22754	
423			Dictaphone Executive Summary	NICE_DE_00826791	NICE_DE_00826805	802
424			BCBS of GA Purchase Agreement with Seltronics Eyretel 10-3-97	BCBS0017		
425			BCBS Invoice for Phase I	BCBS0025		
426			BCBS Invoice for Phase II	BCBS0029		
427			WI003 Use of SourceSafe	WSDEPROD1332868		

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
428			Development Department Report to Board Aug. 98	WSDEPROD4816975		
429			Development Department Report to the Board Dec 97	WSDEPROD4816978		
430			Development Department Report to the Board Feb 98	WSDEPROD4816987		
431			Development Department Report to the Board Jan 97	WSDEPROD4816994		
432			Development Department Report to the Board July 97	WSDEPROD4816997		
433			Development Department report to the Board July 98	WSDEPROD4817002		
434			Development Department report to Board June 97 160,302	WSDEPROD4817005		
435			Development Department report to the board June 98	WSDEPROD4817008		
436			Development Department report to the Board June 98	WSDEPROD4817012		
437			Development Department report to the board Feb 98	WSDEPROD4817016		
438			Development to the board Mar 98	WSDEPROD4817023		
439			Development Department report to the Board May 98	WSDEPROD4817026		
440			Development Department report to the Board April 98	WSDEPROD4817029		

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
441			Development Department report to the Board Sept 97	WSDEPROD4817032		
442			App Development Guide BCBS Eclipse	WSNSDE012967		
443			Eyrete BCBS User Guide	WSNSDE012983		
444			Eyretel ltr to Siemens	WSNSDE013080		
445			Eyretel Integrates to Siemens for CTI-based Digital Recording and QM BCBS	WSNSDE013160		
446			Proposal to Upgrade CTI-Server for BCBS	WSNSDE013657		
447			E1000 Digital Voice Recorder Tech Guide	WSNSDE013904		
448			E1000 Digital Voice Recorder User Guide	WSNSDE015009		
449			Browser Report	WSNSDE047042		
450			Recorder Project Status -- June 8 1998	WSNSDE047118		
451			2 Calls same start time	WSNSDE047127		
452			Codes for that field on the CDR records	WSNSDE047162		
453			Schedules for installing servers CTI Link Training	WSNSDE047235		

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
454			BCBS of GA Purchase Agreement and Seltronics Eyretel 10-3-97	WSNSDE047302		
455			The E-Ware Network Solution	WSNSDE050000		
456	Blair 42		eQuality ContactStore Administration - Recorder 7.1, eWare 7.1, Unify 6.2, Viewer 7.1 (PX 42)	WSDEPROD0103377		
457			License Agreement by and Between Phillips Speech Processing GMBH and NICE Systems, Ltd. Dated 10/30/03	NS019850	NS019875	802
458			Comparison of Total Worldwide Revenue by Market Segment for Dictaphone and NICE for 1996-2001	NSDE009116	NSDE009117	802
459			Competitive Play Book for NICE Systems March 27, 2006 (PX245 Treaster)	WSISTS057858	WSISTS057869	802
460			Witness Systems v. NICE Systems: Competitive Analysis April 2004 (PX249 Treaster)	WSDEPROD0225440	WSDEPROD0225453	802
461			STS v. Witness Issue Summary - Avaya (PX710)	AVAYA011161	AVAYA011163	802
462			Data Monitor Recording Industry Quarterly February 2003 (Q3 2002)	WSNICE026730	WSNICE026775	802
463			Data Monitor Recording Industry Quarterly March 2002 (Q4 2001)	WSDEPROD0006592	WSDEPROD0006638	802
464			Voice/Data Recording Markets, Products & Suppliers 2005 by Tern Systems, Inc.	NICE17510	NICE17867	802
465			World Contact Center Recording Systems Market by the Pelorus Group September 2004	WSISTS052786	WSISTS052905	
466			2006 World Contact Center Recording Systems Market by the Pelorus Group September 2006	NICE15393	NICE15548	

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
467			Witness Systems Form 10-K for Fiscal Year Ending 12/31/03	N/A	N/A	
468			Witness Systems Form 10-K for Fiscal Year Ending 12/31/05	N/A	N/A	
469			Witness Systems Form 10-K Annual Report March 16, 2005	N/A	N/A	
470			Avaya VSR Amendment OEM License Agreement Between Witness Systems and CallMiner, Inc.	WITSDE0010401	WITSDE0010404	
471			Software License Agreement	WITSDE0010469	WITSDE0010497	
472			Fourth Amendment to the Terms and Conditions of Purchase between Witness Systems, Inc and Iontas Limited	WITSDE010498	WITSDE010713	
473			Contact Store/Contact Store Plus Installation for Engineers Component to Course WLN302 Witness Learning Network 2004	WSDEPROD0108294	WSDEPROD0108587	802
474			Integrated CRM Solutions No. 6315-62 by Frost & Sullivan 2001	WSDEPROD0225037	WSDEPROD0225107	802
475			Spreadsheet of Contracts Effective June 25, 2004 - October 18, 2007	WSISTS091779		802
476			Spreadsheet of Contracts Effective March 28, 2003 - August 31, 2006	WSISTS091780		802
477			Witness Key Performance Metrics 2003 - Quarter 2, 2007	WSISTS091781		
478			First Amendment to Software License Agreement dated February 13, 1998 between Eyretel and Funk Software	WSNICE010001	WSNICE010008	

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
479			Second Amendment to Software License Agreement dated February 13, 1998 between Eyretel and Funk Software	WSNICE010009	WSNICE010011	
480			Witness Systems Spreadsheet with Detail Product Sales	WSNSDE0054369		
481			Bid Letter January 29, 2007 from Nice to Witness Systems' Board of Directors	WSNSDE065703		
482			Bid Letter January 22, 2007 from Haim Shaxxx at NICE to N. Discombe re proposal for the sale of Witness Systems	WSNSDE065706	WSNSDE065707	
483			Expert Report of Thomas C. Britven 12/17/2007	N/A		
484			2007-12-17 D281 Identification of WS Core Recording Products Accused of Infringement	N/A		
485			Deposition of Matthew Rosner 09/19/2007	N/A		
486			NICE DICTAPHONE Voice Recording Product Retirement	NICE_DE_01140041		
487			Dictaphone Voice and Data Management	NICE16901		
488			Technology License Agreement between Witness Systems, Inc. and Expert City, Inc.	WSNICE009970		
489			Correspondence from Hart to Judson re renewal term	NICE19163		
490			Software License Agreement between Funk and Eyretel	WSNSDE057668		

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
491			Impact 360 Quality Monitoring Server Infrastructure Guide	NICE_DE_01131432		
492			ContactStore for Communication Manager Version 7.2 Recorder Installation and Administration	WSDEPROD0119983		
493			ContactStore for Communication Manager Version 7.7 Planning Installation and Administration Guide	WSDEPROD2469536		
494			Instructor Guide Quality Monitoring Server and System Administration	WSDEPROD3261279		
495			ContactStore for Communication Manager Version 7.2 Prerequisites Guide	WSISTS013843		
496			Witness CSCM 7.3 System Admin Guide	NSDE001501	NSDE001668	
497			Witness ContactStore for Communication Manager	NICE_DE_01128314		
498			eQuality Balance R6.3.1 System Architecture Overview	NSDE0001773		
499			eQuality ContactStore IP System Guide	NSDE0003104		
500			eQuality ContactStore Plus 2.0 Overview	NSDE 5038625		
501			CSCM 7.2 System Admin Guide	WSDEPROD2398921	WSDEPROD2399062	
502			Bourne Deposition Exhibit 312 - Witness System Inc.'s 360: Compliance Recorder System Infrastructure Guide Release 7.7	N/A	N/A	
503			CSCM 7.7 Planning Installation and Admin Guide	WSDEPROD0264074		

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
504			Blair Deposition Exhibit 26 eQuality ContactStore and ContactStore Plus Solutions Guide Multimedia Recording & Evaluation	NSDE000011	NSDE000052	802
505			Bourne Deposition Exhibit 300 TDM Recorder System Administrator Guide Product Release 6.0 Standard 1.0	N/A	N/A	802
506			Bourne Deposition Exhibit 309 - Witness Systems, Inc. - eQuality ContactStore IP System Guide	N/A	N/A	802
507			Bourne Deposition Exhibit 320 - Witness Systems, Inc. - Impact 360 - Archive Installation and Administration Guide Release 7.7.1	N/A	N/A	802
508			Williams Deposition Exhibit 58 - FREE DROOPY RB-0025/36 Performance and Sizing Supplementary Specifications by Jamie Williams	WSDEPROD1126864	WSDEPROD1126891	802
509			Spohrer Deposition Exhibit 703			802
510			Witness Quality for CM	WSDEPROD0012562	WSDEPROD0012565	802
511			Optimizing Agent Performance with eQuality at Nissan	WSDEPROD1062202	WSDEPROD1062325	
512			Optimizing Agent Performance with eQuality	WSDEPROD1936548	WSDEPROD1936593	
513			PCT-US00-15419 File History	N/A	N/A	802
514			Industry Report by SalomonSmithBarney Digital Login and Quality Insurance Industry Customer Contact Centers continue to drive the industry Dated 7/5/00	DICT0066607	DICT0066644	802

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
515			NICE 2004 Form 20-F	N/A	N/A	802
516			NICE Systems, Ltd. Form 20-F filed 5/16/06 for period ending 12/31/05	N/A	N/A	
517			NICE Systems, Ltd. Form 20-F filed 6/29/05 for period ending 12/31/04	N/A	N/A	802
518			Witness Contact Store 7.7 for Avaya Communication Manager CSCM Technical Note: CSCM 7.7 for Quality Monitoring 7.7.1 (formerly Equality Balance) (PX 704)	N/A	N/A	
519			Deposition of C. J. Elias-West dated 12/5/01 (in Dictaphone v. NICE)	NICE_DE_01444966	NICE_DE_01445003	
520			MediaStore Mk 2 Digital Voice Recorder Installation Guide	WSDEPROD0009463	WSDEPROD0009612	
521			Adtech Solutions Reseller Program Guide	WSDEPROD0011063	WSDEPROD0011069	
522			Instructor Guide eQuality ContactStore Express 7.2 Installation and Admin	WSDEPROD0111327	WSDEPROD0111462	
523			Impact 360 Product Suite; Record and Replay System Architecture Draft 1 (PX 701)	WSDEPROD0536527	WSDEPROD0536548	
524			Witness Systems Software Architecture dated 12/24/04	WSDEPROD0579244	WSDEPROD0579302	
525			Witness Product Availability Guide	WSDEPROD0706756	WSDEPROD0706797	
526			Witness Product Availability Guide	WSDEPROD0765853	WSDEPROD0765901	

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
527			eQuality ContactStore Installation Guide	WSDEPROD0774906	WSDEPROD0775075	
528			Compliance Recorder 7.7 Installation and Admin Course Module 3	WSDEPROD0829511	WSDEPROD0829842	
529			Witness Systems Impact 360 Architectural Roadmap August 2006 Presentation by Dan Spohrer (PX 705)	WSDEPROD1521018	WSDEPROD1521028	
530			hardware cost	WSDEPROD178395	WSDEPROD1783101	
531			Impact 360 - TDM Recorder Operations Turnover Training Hardware	WSDEPROD2490362	WSDEPROD2490370	802
532			Adtech quote for misc hardware	WSDEPROD2546990	WSDEPROD2546995	802
533			Development Department Report to the Board March 98	WSDEPROD4816963	WSDEPROD4816966	802
534			Digital Recording System Evaluation Criteria	WSNSDE0048140	WSNSDE0048142	802
535			Site Acceptance Plan	WSNSDE0048723	WSNSDE0048727	802
536			High Level Design for NGX Card Integration	WSNSDE060023	WSNSDE060033	802
537			Low Level Design for NGX Card Integration	WSNSDE060034	WSNSDE060059	802
538			Eyretel Integration Specifications -	WDEPROD3162922		401, 402, 802
539			E1000-E500 Recorder Engineer Familiarisation -	WSDEPRD1329437		401, 402, 802
540			Data Transfer from eQN to eQB -	WSDEPROD0344466		401, 402, 802

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
541			Data Store Manager Detailed Design Specification -	WSDEPROD0531075		
542			eQuality BDR Server 6.0 API Design Draft 05 -	WSDEPROD0535600		
543			Network Chart - W	WSDEPROD0535629		
544			Witness Call Manager Model Revision v.060 -	WSDEPROD0710937		
545			Table describing the Build 19 WENS Event attributes appeared by Call Manager during one connectionEvent -	WSDEPROD0719528		
546			Witness Service Design Specification -	WSDEPROD0719560		
547			WDLS Detailed Design Specification -	WSDEPROD0719616		
548			TDM Recorder System Infrastructure Release 7.6 2005 -	WSDEPROD0800887		
549			Witness Systems Design Specification EDS227 Call Stitching -	WSDEPROD1279966		
550			Eyretel Engineering Technical Note - ETN-215 - Eware2 Replay Release Notes -	WSDEPROD1282942		
551			Witness Systems High Volume Storage Architectural Design Specification -	WSDEPROD1515152		
552			Witness Systems Media Channel Data Manager Detailed Design Specification -	WSDEPROD1567992		
553			Witness Systems - Content Manager Detailed Design -	WSDEPROD1943437		

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
554			Witness Systems - How WEPS Works -	WSDEPROD1943466		
555			Witness Systems BDR High Volume Storage Management Detailed Design Specification -	WSDEPROD2698432		
556			Witness Systems - How AIM Works -	WSDEPROD2698516		
557			Witness EQBalance 7.6 -	WSDEPROD3247863		
558			Blue Pumkin Sales Order -	WSDEPROD3390315		
559			Contactstore for Communication Manager Version 7.2SP2 -	WSDEPROD351215		
560			Eyretel - Engineering Design Specification EDS 224 Broken Call Handling -	WSDEPROD3530729		
561			Technical Note ETN200 E-Ware 2 Database Structure -	WSDEPROD3545325		
562			Eyretel Technical Note ETN211 E. Ware 2.0 to 2.2 Incremental Roll- Out	WSDEPROD3545417		
563			Eyretel E.Ware2 - Under the hood -	WSDEPROD3554916		
564			Eyretel Engineering Design Specification EDS 192 Stitching broken Calls -	WSDEPROD4025886		
565			Technical Note ETN200 E-Ware 2 Database Structure -	WSDEPROD4037521		
566			List	WSDEPROD4083772		

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
567			Mediastore Engineer Familiarisation -	WSDEPROD4100743		
568			Create Procedure Add IP With Stitching	WSDEPROD990315		
569			Contactstore and eQBalance - Feature & Function Comparison -	WSISTS021057		
570			EASaccess.Java -	WSNSDE012933		
571			Eyretel Technical Note ETN123 Call Pulling and other tricks for E1000s -	WSNSDE014395		
572			Avaya - Overview for Avaya Communication Manager -	WSNSDE025815		
573			BCBS & Seltronics Eyretel recording equipment agreement -	WSNSDE047657		
574			BCBS Notes & Action Points from Meeting at SEI, Landrover 11-6-1997 -	WSNSDE048143		
575			Eyretel Application Development Guide BCBS Eclipse Project -	WSNSDE12967		802
576			5/26/99 Letter from J. Diamante at Penny & Edmonds to K. Rubenstein, Esq. re licensing of Dictaphone Technology	N/A		401, 402, 403, 802, not produced
577			NICE Sunsets Dictaphone CRS	NICE_DE_00822990		
578			NICE Literal NI Partial SJ Motion	NSDE 020090	NSDE 020106	802, 901
579			NICE Reply Supporting LR NI Partial SJ Motion	NSDE 010291	NSDE 010299	
580			E-ware Network Solution	WSNSDE0050001		

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
581			NICE Bid Ltr to Blue Pumpkin	WSNSDE065700		
582			Witness agreement with Dictaphone 1/22/97	NICE22760	NICE22809	
583			Comparison of NICELog NICE Universe and da Vinci.pdf	DICT0116924	DICT0116934	
584			9/23/98 BancBoston Digital Logging & Quality Assurance Industry	FG00003168	FG000031220	
585			7/5/2000 Salomon Smith Barney Industry Report	DICT0066607	DICT0066644	
586			Deposition of Thomas Britven 11/8/2002	NICE_DE_01445004		
587			NICE Systems and Dictaphone Corporation Settle Patent Litigation Press Release 12/11/03	NA		
588			02-22-2002 Henits depo Ex 13	JONESDAY0054747	JONESDAY0054748	
589			02-22-2002 Henits depo Ex 14	JONESDAY0054750	JONESDAY0054753	
590			Press Release 6/4/91 Racal's Rapidax Voice Log In Recorder Offer Instant Message Recall of Multi Channel Calls Transmissions for Emergency Services, Transportation, Financial Institutions 02-22-2002 Henits Depo Ex 20	JONESDAY0054899	JONESDAY0054902	
591			Eyretel Installation Report for BCBS	WSNSDE047422		
592			BCBS Contract	WSNSDE047512	WSNSDE047524	

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
593			E500/E1000 Engineer Familiarisation	WSDEPROD1329437		
594			CTI Server Engineer Familiarisation	WSDEPROD1331178		
595			CSCM Slides	WSDEPROD3531215		
596			Unify Script	WSDEPROD3990315		
597			E1000 For Windows User Guide	WSNSDE011276		
598			Administration for Network Connectivity for Avaya Communication Manager	WSNSDE033352		
599			BCBS Issues List	WSNSDE047080		
600			April 7 Letter from Camacho to Warfield	WSNSDE047126		
601			Reply to BCBS RFI dated 9/27/97	WSNSDE048145		
602			BCBS Fax from Camaco to Warfield, 11/3/97	WSNSDE048723		
603			Henits Depo in Dictaphone 022202	N/A		
604			NICE's Memo in Opp to DICT's MSJ to Dismiss NICE's Inequitable Conduct Claim	N/A		
605			NICE's Opp to DICT's Claim Construction	N/A		

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
606			United States Patent No. 5,790,798	N/A		
607			United States Patent No. 6,404,857	N/A		
608			Standard & Poors Quantitative Sotck Report for Witness Systems, Inc. 08/14/2006	N/A		
609			Witness Systems, Inc. Form 10-K filed March 24, 2000	N/A		
610			Witness Systems Press Releases	WSNSDE 064787	WSNSDE 065391	
611			Witness Systems Awards	Various		
612A- ii			Witness Industry Analyst Reports 2000 through 2006	Various		
613			A Magnetic Storage Disk Based Digital Audio Recording, Editing and Processing System," presented to the public at the 83 rd AES Corporation on October 16-19, 1987. LOOSABLLP002381-	LOOSABLLP002381	2398	
614			eQuality ContactStore and ContactStore Plus Solutions Guide Multimedia Recording and Evaluation	NSDE000011	NSDE000052	
615			Memorandum of Law in Support of Motion for Leave to Amend Counterclaims and Leave to Submit an Expert Report	JONESDAY0055642	JONESDAY0055651	
616			NICE Presentation - Witness PL Comparison	NICE00698	NICE00708	
617			Competitive News Update Dec. 4	STS018045	STS018046	
618			Comparison Matrix - NICE vs Eyretel re VoIP Recording	STS018055	STS018056	
619			NICE Presentation - Eyretels VoIP recording - Competitive Analysis	STS 021091	STS021104	
			DEMONSTRATIVES TBD			

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection	
			The following documents (DTX 700-902) relate to the expert opinions of Mr. Napper and Mr. Britven regarding alleged damages. Because Witness Systems only expects to introduce a small number of these documents into evidence, and in an effort to reduce the size of the parties' respective exhibit lists, Witness Systems made the following proposal to NICE. Both parties would simply list two entries on their exhibit lists: "Documents relied upon or considered by Mr. Napper," & "Documents relied upon or considered by Mr. Britven." NICE rejected that proposal. As a result, Witness Systems separately includes the following, reduced list of documents that may be used or introduced into evidence in connection with the testimony of Mr. Napper and/or Mr. Britven.				
700				Marketing Strategy 1st Draft	DICT0066536	DICT0066606	
701				CRS Next Generation Market Requirements Document	DICT0098661	DICT0098749	
702				3-5-1999 Ltr Pennie Edmonds to McShane re Licensing of Dictaphone Technology	DICT0099379	DICT0099380	
703				Dictaphone da Vinci Product Marketing Plan version 1.0	DICT0116382	DICT0116477	
704				PCT Request - Digital Recordign of IP Based Distributed Switching Platform	EHR 0000517	EHR 0000540	
705				9/23/98 BancBoston Digital Logging & Quality Assurance Industry (FG00003168-220)	FG00003168	FG00003220	
706				7/5/2000 Salomon Smith Barney Industry Report (DICT0066607-44)	JONESDAY0039963	JONESDAY0039987	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
707			JONESDAY0040309 SalomonSmithBarney Industry Report 7-5-2000 (DICT0085482-516)	JONESDAY0040309	JONESDAY0040343	
708			3/1/99 Letter from J. Dimante to P. Robinson, Esq. re Licensing of Dictaphone Technology(DICT099379- 80)	JONESDAY0046540	JONESDAY0046541	
709			9/23/98 BancBoston Digital Logging & Quality Assurance Industry (FG00003168-220)	JONESDAY0048099	JONESDAY0048151	
710			3/5/99 Letter from J. Dimante, Esq. to A. J. McShane re Licensing of Dictaphone Technology	JONESDAY0052819	JONESDAY0052822	
711			4580012 Patent File Wrapper	MERC015302	MERC016000	
712			02/25/2003 Amendment to the NICE and Netopia License Agreement	NET000001	NET000024	
713			License Agreement btw Netopia and IBS.pdf	NET000057	NET000066	
714			License Agreement btw Netopia and DEES.pdf	NET000067	NET000076	
715			Asset Purchase and Sale Agreement between Dictaphone Corporation and NICE Systems Inc.	NICE_DE_01135435	NICE_DE_01135510	
716			1/10/2000 Dictaphone reports strong sales of its Freedom Recording System	NICE_DE_01140038	NICE_DE_01140040	
717			Call Center Magazine article must read	NICE_DE_01444805	NICE_DE_01444810	
718			Deposition of C. J. Elias-West dated 12/5/01 (in Dictaphone v. NICE)	NICE_DE_01444966	NICE_DE_01445063	
719			Settlement Agreement btw NICE and Dictaphone 12/11/2003	NICE00422	NICE00455	
720			NICE 20-F 2001	NICE07319	NICE07443	
721			Competing Against Witness Systems PowerPoint	NICE16839	NICE16847	
722			Recording and QM Markets Competitive LandScape 3/1/2001	NICE16864	NICE16900	
723			Dictaphone Voice and Data	NICE16901	NICE16916	

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NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
			Management			
724			Compare screen capture chat btw NICE and Witness	NICE17509	NICE17509	
725			Voice/Data Recording Markets, Products & Suppliers 2005 by Tern Systems, Inc.	NICE17510	NICE17867	
726			Screen Agent Total Analysis NA - Product Only	NICE17879	NICE17932	
727			Screen agent total analysis NA - Maintenance and Services	NICE17933	NICE18280	
728			Screen Agent total analysis USA - Product Only	NICE18281	NICE18547	
729			NICE Sales SpreadSheet	NICE18671	NICE18682	
730			1/17/96 Dictaphone Letter to Witness Systems Attn. Kirk Knous	NICE18847	NICE18849	
731			Insight 1996 Pricing	NICE18955	NICE18970	
732			Correspondence from Hart to Judson re renewal term	NICE19163	NICE19163	
733			DataMonitor Q3 1999	NICE210665	NICE210692	
734			CFIRS File	NICE21683	NICE21683	
735			Insight Agreement dated 3/12/96	NICE22753	NICE22754	
736			Witness agreement with Dictaphone 1/22/97	NICE22760	NICE22809	
737			Funk Software Invoices to Dictaphone	NICE25287	NICE25315	
738			Dictaphone ltr re licensing the product from Avalan	NICE25323	NICE25324	
739			NICE Universe product brochure.	NICEINC002754	NICEINC002805	
740			Screen Capture High Level Design	NICEINC002860	NICEINC002887	
741			NICE Logger Sales Package	NS018243	NS018267	
742			License Agreement by and Between Phillips Speech Processing GMBH and NICE Systems, Ltd. Dated 10/30/03	NS019850	NS019878	

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
743			Call Center Magazine article must read	NS100919	NS100924	
744			DMG 2007 Speech Analytics Market Report	NS101401	NS101679	
745			Witness 10-K 2003	NSDE0005392	NSDE0005539	
746			Expert Report of Thomas Britven September 2002 (in Dictaphone v. NICE)	NSDE0008972	NSDE0009089	
747			Attachment IV - Dictaphone CRS 94 - 00	NSDE0009107	NSDE0009109	
748			OEM Agreement btw Eventide Inc and Dictaphone	NSDE0706926	NSDE0706966	
749			DataMonitor Q2 2000	STS019049	STS019093	
750			DataMonitor Q2 2002	STS019094	STS019163	
751			DataMonitor Q3 2004	STS019271	STS019313	
752			NICE 20-F 2003	TRBRS 001497	TRBRS 001654	
753			OEM License Agreement between Aurix and Witness Systems dated 8/3/06	WITSDE0010114	WITSDE0010151	
754			VSR Amendment OEM License Agreement	WITSDE0010401	WITSDE0010404	
755			OEM License Agreement between Witness Systems and CallMiner dated 2/2/04	WITSDE0010405	WITSDE0010417	
756			Software License Agreement between Eyretel and Funk Software	WITSDE0010469	WITSDE0010713	
757			2001 FrostandSullivan 6317 Agent Optimization and Performance Report	WSDEPROD0224940	WSDEPROD00224990	
758			PPT The Witness Sytems Competitive Edge	WSDEPROD0316613	WSDEPROD0316655	
759			License to Use Aurix Audio Mind and Software dated 4/19/05 between Aurix and RETELL	WSDEPROD1505443	WSDEPROD1505455	
760			Co-Marketing Agreement between Witness Systems, Inc. and CallMiner, Inc. 1/31/2003	WSDEPROD3343494	WSDEPROD3343496	

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
761			Confidentiality Agreement between Eyretel Limited and Funk Software, Inc. 12/17/1997	WSDEPROD3546256	WSDEPROD3546258	
762			Draft Preliminary Software Agreement between Eyretel Limited and Funk Software, Inc.	WSDEPROD5125037	WSDEPROD5125041	
763			Non-Exclusive OEM Master License Agreement between Witness Systems and Avaya, Inc.	WSISTS047502	WSISTS047540	
764				WSISTS047594	WSISTS047598	
765			2005 November Q2 2005 Datamonitor Report	WSISTS049779	WSISTS049824	
766			Gartner Marketscope Contact Center Quality Management, 2004 Update	WSISTS050659	WSISTS050665	
767			2004 Pelorus Group World Contact Center Recording System	WSISTS052786	WSISTS052905	
768			Addendum to Non-Exclusive Master License Agreement between Witness Systems, Inc. and Avaya, Inc. 6/20/2006	WSISTS065772	WSISTS065777	
769			Spreadsheet of Contracts Effective March 28, 2003 - August 31, 2006	WSISTS091780	WSISTS091780	
770			Witness Key Performance Metrics 2003 - Quarter 2, 2007	WSISTS091781	WSISTS091781	
771				WSNB021504	WSNB021514	
772			First Amendment to Software License Agreement dated February 13, 1998 between Eyretel and Funk Software	WSNCIE010001	WSNCIE010011	
773			Exhibit F to Software License Agreement between Funk Software, Inc. and Eyretel Limited 02/13/1998 - Resale Product Asynchronous product	WSNCIE010031	WSNCIE010031	
774			United States Patent No. 5,790,798 Beckett	WSNICE001526	WSNICE001544	
775			Technology License Agreement between Witness Systems, Inc. and Expert City, Inc.	WSNICE009970	WSNICE010000	
776			Tern Systems Overview of the Voice/Data Recording Market	WSNICE025339	WSNICE025348	

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
777			2005 DMG Consulting Quality Management/Liability Recording Product and Marketing Report	WSNICE025349	WSNICE025567	
778			Pelorus Group 2006 World Contact Center Recording Market Report	WSNICE025568	WSNICE025723	
779			Data Monitor Recording Industry Quarterly January 2006 (Q3 2005)	WSNICE027302	WSNICE027347	
780			Software License and Sales Data	WSNICE027761	WSNICE027828	
781			"Key Performance Metrics Q4 2006", produced in Excel on February 20, 2007	WSNICE027829	WSNICE027833	
782			Witness Systems Spreadsheet with Detail Product Sales	WSNSDE0054369	WSNSDE0054369	
783				WSNSDE0054370	WSNSDE0050004	
784			Exhibit F to Software License Agreement between Funk Software, Inc. and Eyretel Limited 02/13/1998 - Resale Product Asynchronous product	WSNSDE057713	WSNSDE057713	
785			NICE Bid Ltr to Blue Pumpkin	WSNSDE065700	WSNSDE065702	
786			"IP Customer Count Q2 2007", produced in Excel on September 25, 2007			
787			"Key Performance Metrics Q4 2006", produced in Excel on February 20, 2007			
788			"Maint Calculations", produced in Excel on October 25, 2007			
789			"Understanding the Benefits of Speech Analytics Solutions", published by Datamonitor, October, 2006			
790			Audio Codes and NICE License Agreement	Need Document		
791			Avaya Business Edition Orders - 25 Oct 07, produced in Excel on October 25, 2007			
792			Comverse 1999 Form 10-K			
793			Copy of the Screen Agent Maintenance and Services.xls			

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
794			Defendant's Responses to Plaintiff Witness Systems, Inc.'s First Requests for Admission			
795			Deposition of Aviad Abiri, January 28, 2005			
796			Deposition of Barak Eilam, October 9, 2007			
797			Deposition of Christopher Blair, October 10, 2006			
798			Deposition of Christopher Blair, October 2, 2007			
799			Deposition of Daniel Hart, May 29, 2002			
800			Deposition of Daniel Spohrer, August 3, 2007			
801			Deposition of Daniel Spohrer, February 22, 2007			
802			Deposition of Daniel Spohrer, May 24, 2007			
803			Deposition of Eyal Danon, December 20, 2005			
804			Deposition of Eyal Rudnik, June 13, 2007			
805			Deposition of Ilan Yosef, January 11, 2007			
806			Deposition of Ilan Yosef, January 10, 2007			
807			Deposition of Jamie Williams, May 17, 2007			
808			Deposition of John Bourne, February 27, 2007			
809			Deposition of John Bourne, March 7, 2007			
810			Deposition of John Bourne, May 23, 2007			
811			Deposition of John Bourne, October 25, 2007			
812			Deposition of John Henits, August 21, 2007			
813			Deposition of John Henits, May 24, 2007			

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
814			Deposition of Joseph Watson, October 4, 2007			
815			Deposition of Joseph Watson, September 6, 2007			
816			Deposition of Matthew Rosner, September 19, 2007			
817			Deposition of Mordechai Nisani, September 13, 2005			
818			Deposition of Nancy Treaster, February 22, 2007			
819			Deposition of Nancy Treaster, June 29, 2007			
820			Deposition of Nancy Treaster, March 2, 2007			
821			Deposition of Stephen Beckett II, February 23, 2007			
822			Deposition of Thomas W. Britven, November 1, 2007			
823			Deposition of Thomas W. Britven, November 8, 2002			
824			Deposition of William Evans, September 27, 2007			
825			Deposition of Yochai Rozenblat, September 20, 2007			
826			Dictaphone and Eventide License Agreement	Need Document		
827			Dictaphone Corporation 1999 10-K			
828			Exhibit F - Infringement Contentions for '220			
829			Expert Report of Brian W. Napper, April 11, 2007, and Documents Considered Therein [Witness Systems, Inc. v. NICE Systems, Inc. and NICE Systems, Ltd. (1: 04 CV 2531)]			
830			Expert Report of Brian W. Napper, November 30, 2007, and Documents Considered Therein [Witness Systems, Inc. v. NICE Systems, Inc. and NICE Systems, Ltd. (1: 06 CV-0126-TCB)]			

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
831			Expert Report of Brian W. Napper, November 6, 2007, and Documents Considered Therein [STS Software Systems, Ltd. and NICE Systems, Ltd. v. Witness Systems, Inc. (1:04 CV 2111 RWS)]			
832			Expert Report of Thomas W. Britven, December 17, 2007, and Documents Considered Therein (limited to documents produced by NICE and made available)			
833			Expert Report of Thomas W. Britven, September 20, 2002 [Dictaphone Corporation v. NICE Systems, Ltd. and NICE Systems, Inc. (3:00 CV 1143 CFD)]			
834			http://callcenterinfo.tmcnet.com/Analysis/articles/13658-nice-systems-the-advantages-speech-analytics-the-call.html .			
835			http://searchorm.techtarget.com/originalContent/0,289142,sid11_gci1175661,00.html .			
836			http://www.callcentermagazine.com/showArticle/showArticle.jhtml?articleId=198700826			
837			http://www.crmbuyer.com/story/39435.html .			
838			http://www.nice.com/news/media.php?sub=1 .			
839			http://www.nice.com/news/show_pr.php?id=462 .			
840			http://www.nice.com/solutions/enterprise/nice_perform.php .			
841			http://www.sec.gov/Archives/edgar/data/946734/0000947871-00-000262.txt .			
842			http://www.tmcnet.com/cti/mayjune/cti_news.htm .			

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
843			http://www.witness.com/content/1-360_Overview_2pp_US.pdf , p.2.			
844			http://www.witness.com/content/Impact%20360%20Workforce%20Optimization.pdf , p.3.			
845			http://www.witness.com/content/success%20stories/Continental%20Airlines.pdf .			
846			http://www.witness.com/main.aspx?pid=96 .			
847			NICE "CRS 26.3 USA - readonly" produced in Excel			
848			NICE "MC 30-08-07" produced in Excel			
849			NICE "Nice Perform Products USA" produced in Excel			
850			NICE "NICE Perform USA" produced in Excel			
851			NICE "NiceLog q12002-q22007 By Year" produced in Excel			
852			NICE "Niceperform USA - readonly" produced in Excel			
853			NICE "NP-Universe-CRS-Log P&L Analysis for Verint Case" produced in Excel			
854			NICE "NP-Universe-CRS-Log P&L Analysis for Witness Case w corrected nicelog" produced in Excel			
855			NICE "TB_2006-2002 summary NICE Consol for Witness Case - readonly" produced in Excel			
856			NICE "Universe 18.3 No Universe USA (SO Level)" produced in Excel			
857			NICE "Universe 4.7" produced in Excel			
858			NICE "Universe USA - readonly" produced in Excel			
859			NICE "VoIP Deals USA_6600853" produced in Excel on August 30, 2007			
860			NICE Press Release: NICE Systems and Dictaphone Corporation Settle			

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
			Patent Litigation, December 11, 2003			
861			NICE Systems Ltd's and NICE Systems Inc's Identification of Witness' Core Recording Products Accused of Infringement			
862			NICE Systems, Inc.'s & LTD's Revised LPR 4.2 Response & Exhibits, June 13, 2005			
863			NICE Systems, Ltd. 1998 20-F			
864			NICE Systems, Ltd. 1999 20-F			
865			NICE Systems, Ltd. 1999 A2 20-F			
866			NICE Systems, Ltd. 2000 20-F			
867			NICE Systems, Ltd. 2001 20-F			
868			NICE Systems, Ltd. 2002 20-F			
869			NICE Systems, Ltd. 2003 20-F			
870			NICE Systems, Ltd. 2004 20-F			
871			NICE Systems, Ltd. 2005 20-F			
872			NICE Systems, Ltd. 2006 20-F			
873			Q1 07 WW Consolidated Maintenance Renewal Rates" produced in Excel on October 24, 2007			
874			Q2 2006 Witness Systems Earnings Conference Call – Final, July 27, 2006			
875			Q2 2007 NICE Systems Earnings Conference Call – Final, August 1, 2007			
876			Q4 06 Nov Royalty Report, produced in Excel			
877			QM and WFM Product Penetration Customers Only (native format)			
878			Quality Must Be Seen and Not Heard			

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
879			Rebuttal Expert Report of Brian W. Napper, June 7, 2007, and Documents Considered Therein [Witness Systems, Inc. v. NICE Systems, Inc. and NICE Systems, Ltd. (1: 04 CV 2531)]			
880			Rebuttal Expert Report of Thomas W. Britven, May 21, 2007, and Documents Considered Therein			
881			Screen Agent Claim GM Analysis 191206.xls			
882			Screen Agent PRODUCTS (anna).xls			
883			Supplemental Expert Report of John C. Jarosz, July 22, 2002 [Dictaphone Corporation v. NICE Systems, Ltd. and NICE Systems, Inc. (3:00 CV 1143 CFD)]			
884			Trends and Technology in the Recording Industry: H1 2006, <i>Datamonitor</i>			
885			Trends and Technology in the Recording Industry: H2 2006, <i>Datamonitor</i>			
886			US Patent 5,790,798			
887			US Patent 6,404,857 B1			
888			Witness 2006 Preliminary Financial Results Conf Call – Final, January 3, 2007			
889			Witness Systems 10-K/A, February 8, 2007			
890			Witness Systems Inc. 1999 10-K			
891			Witness Systems Inc. 2000 10-K			
892			Witness Systems' Markman Brief			
893			Witness Systems, Inc. 2001 10-K			
894			Witness Systems, Inc. 2002 10-K			

WITNESS SYSTEMS' TRIAL EXHIBIT LIST – Exhibit 7 to the Pretrial Order

NEW DTX NO	Depo Ex No.	Depo Date	Description	Bates Begin	Bates End	Objection
895			Witness Systems, Inc. 2002 10-K			
896			Witness Systems, Inc. 2003 10-K			
897			Witness Systems, Inc. 2003 10-K			
898			Witness Systems, Inc. 2004 10-K			
899			Witness Systems, Inc. 2005 10-K/A			
900			Witness Systems, Inc. 2006 10-K			
901			www.teleformix.com			
902			www.witness.com			

EXHIBIT NO. 8 TO THE JOINT PRE-TRIAL ORDER

NICE'S WITNESS LIST

I. FACT WITNESSES

Below are the fact witnesses that NICE may call in its case-in-chief. NICE may also call any witnesses listed by Witness. In addition to the witnesses listed below, NICE reserves the right to call any other Witness Systems, Inc. witnesses in the courtroom to adduce evidence of infringement and willful infringement.

NICE further reserves the right to supplement Exhibit 8 to identify additional expert witnesses whom NICE may call in person at trial after expert depositions have concluded.

The individuals whose address is given as NICE Systems, Inc. are current NICE Systems, Inc. officers, directors, or employees. Their address is:

NICE Systems, Inc.
301 Route 17
Rutherford, New Jersey 07070

The individuals whose address is given as NICE Systems, Ltd. are current NICE Systems, Ltd. officers, directors, or employees. Their address is:

NICE Systems, Ltd.
8 Hapnina Street, PO Box 690
43107 Ra'anana, Israel

The individuals whose address is given as Verint Americas Inc. are former Witness Systems, Inc. officers, directors, or employees who are now current Verint Systems, Inc. officers, directors, or employees. Their address is:

Verint Americas Inc.
330 South Service Road
Melville, New York 11747

NICE may call the following fact witnesses live during its case-in-chief¹:

1. Shlomo Shamir²
NICE Systems, Ltd.
2. Christopher Blair (as an adverse witness)
Software Hothouse, Ltd.
275 London Road
Burgess Hill
West Sussex, United Kingdom
3. Daniel Spohrer (as an adverse witness)
10925 South Kimball Bridge Crossing
Alpharetta, Georgia 30022

NICE may call the following fact witnesses by deposition testimony during its case-in-chief:

1. David Glowny
53 Candlewood Road
Milford, Connecticut 06461
2. Adtech-GESI, LLC
(By Timothy Shadburn)
1880 McFarland Road
Alpharetta, GA 30005
3. John Bourne
Verint Americas Inc.
4. Kevin Hegebarth
145 Millwick Cove
Alpharetta, Georgia 30005

¹ Witness has informed NICE that Nancy Treaster and Christopher Blair will be available for trial. To the extent Nancy Treaster, Christopher Blair, or any other witness listed as a live witness is unavailable for trial, NICE intends to use the deposition of that witness at trial.

² Pending the Court's resolution of the Motions *in Limine*, should NICE be precluded from calling Shlomo Shamir as a live witness, NICE will replace Mr. Shamir with one of the following witnesses: Ilan Yosef (NICE Systems, Ltd.), Yochai Rozenblat, Matthew Rosner, Eyal Rudnik (each of which are employed by NICE Systems, Inc.).

5. Jan Carel Warfield
2904 South Haven Drive
Annapolis, Maryland 21401
6. Duane Wright
10 Manor Road
Guildford, United Kingdom GU2 9NE
7. Joseph Watson
Verint Americas Inc.
8. Marc Calahan
Verint Americas Inc.
9. Jamie Williams
Verint Americas Inc.
10. Avaya, Inc.
(By Scott McKechnie)
211 Mt. Airy Road
Basking Ridge, New Jersey 07920

II. EXPERT WITNESSES

A. John Henits, Bethel, Connecticut³

Mr. Henits is currently a self-employed consultant who provides engineering and design consulting services. Previously, Mr. Henits held several positions at Dictaphone Corporation, where his 14 year career has included engineering management and development of communication recording systems.

B. Thomas W. Britven, CPA, CVA, CFE, ABV, Houston, Texas

Thomas W. Britven is currently the president of Lumin Expert Group and was the Senior IP Practice Director of LECG, LLC, an economic and business consulting firm. During his career, Mr. Britven has provided valuation, auditing, and economic business strategy consulting services, and has studied claim damages issues in numerous disputed

³ Mr. Henits will be testifying both as a fact witness and as an expert witness.

matters. His experience spans a number of industries, including biotechnology, computer, manufacturing, medical device, oil and gas, retail, and transportation.

EXHIBIT NO. 9 TO THE JOINT PRE-TRIAL ORDER

Witness Systems' Witness List

Below are the witnesses that Witness Systems may call either live or by deposition testimony during its case-in-chief. Witness Systems may also call any witnesses listed by NICE. In addition to the witnesses listed below, Witness Systems reserves the right to call any other witnesses in rebuttal.

Witness Systems may call the following fact witnesses live during its case-in-chief (the following witnesses are represented by Fish & Richardson, P.C. and should only be contacted through counsel):

1. Christopher Blair
2. William Evans
3. Daniel Spohrer
4. Nancy Treaster
5. Jamie Williams

Witness Systems may call the following fact witnesses by deposition testimony during its case-in-chief (the following individuals are not represented by Fish & Richardson, P.C.):

1. C.J. Elias-West
NICE Systems, Inc.
2. Eran Porat
NICE Systems Ltd.
3. Yochai Rozenblat
NICE Systems, Inc.
4. Shlomo Shamir
NICE Systems Ltd.

Below are the expert witnesses that Witness Systems may call during its case-in-chief. Witness Systems may also call any witnesses listed by NICE. In addition to the witnesses listed below, Witness Systems reserves the right to call any other witnesses in rebuttal.

The following expert witnesses should only be contacted through counsel:

1. Brian W. Napper
2. John M. Strawn, Ph.D.
3. Jeffrey S. Vitter, Ph.D.

EXHIBIT 10

PLAINTIFF'S DEPOSITION DESIGNATIONS
(with Defendant's objections and counter-designations)

1. **Witness Systems, Inc. v NICE Systems, Inc. and NICE Systems, Ltd. 06-CV-00126-TCB**
Bourne, John Richard Xavier William October 25, 2007
(including referenced exhibits)

Designation	Objections to Designations
3:22-3:24	
4:4-4:6	
5:8-5:13	
5:14-5:20	
12:7-14:12	
16:19-17:22	
18:13-18:16	
18:21-19:7	
190:19-192:2	
202:17-203:24	
204:12-204:21	
206:1-206:20	
207:2-207:15	

Bourne Counter Designations
200:13-22
201:20-10
203:25-204:11
204:22-24
206:21-207:15
239:1-240:25

2. NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc. 06-CV-311-JJF
30 (b) (6) Witness Systems, Inc. - Calahan, Marc June 28, 2007
(including referenced exhibits)

Designation	Objections to Designations
3:5-3:6	
3:21-4:4	
7:1-10:8	
11:8-11:17	
169:13-169:20	

Calahan Counter Designations
16:25-17:10
169:6-12
170:18-25

3. NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc. 06-CV-311-JJF
Glowny, David Andrew May 17, 2007
 (including referenced exhibits)

Designation	Objections to Designations
4:9-4:11	
4:16-4:21	
13:21-14:17	
14:20-15:14	
16:4-16:9	
19:18-21:24	
129:22-131:12	

Glowny Counter Designation
15:15-16:3
69:22-72:5
89:8-20
96:13-98
99:11-100:3
134:25-136:5

4. NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc. 06-CV-311-JJF
 Hegebarth, Kevin Glenn August 9, 2007
 (including referenced exhibits)

Designation	Objections to Designations
4:14-4:15	
4:21-5:15	
9:8-9:24	
10:6-11:3	
23:17-25:8	
37:14-38:18	
39:1-39:10	
41:23-42:15	
44:17-44:25	
46:1-46:12	
46:19-46:21	
42:25-47:8	
47:12-47:19	
47:22-48:3	
49:14-49:18	
49:25-50:2	
50:7-50:21	
53:24-54:5	
54:10-54:15	
54:18	
62:2-62:9	
62:12-62:14	
64:5-64:17	
66:3-66:13	
66:17-66:19	
66:23-66:25	
67:5-67:6	
67:11-67:16	
67:20-68:7	
68:19-68:21	
68:24-69:6	
69:8-69:16	
70:12-70:14	
70:16-70:22	
71:2-71:12	
71:17	
72:19-73:2	
73:6-73:9	
73:11-73:19	
73:22	
74:21-75:6	
75:10-75:14	
75:24-76:9	
76:12	
77:3-77:6	
77:9-77:14	
77:17-77:22	

77:25	
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Hegebarth Counter- Designation
9:25-10:5
39:11-40:5
45:12-25
51:7-12
55:4-13
61:1-22
61:25-62:1
62:15-19
63:13-19
63:21-64:2
68:8-9
68:15-18
69:7
79:22-80:23
81:2-8
82:6-83:19

5. STS Software Systems, Ltd v. Witness Systems, Inc. 04-CV-2111-RWS
 30 (B) (6) Avaya Inc. - McKechnie, Scott Franklin March 20, 2007
 (including referenced exhibits)

Designation	Objections to Designations
4:6-4:8	
4:10-4:11	
5:1-5:7	
6:8-7:2	
7:7-7:19	
11:7-11:20	
11:21-11:25	
22:8-22:18	
22:19-23:9	
24:9-24:11	
24:14-24:16	
25:3-25:6	
25:9-26:8	
26:10-26:16	
28:16-28:20	
28:23-29:2	
29:4-29:7	
29:11-29:12	
29:15	
92:6-93:13	
116:10-117:16	
117:17-119:10	
122:25-123:13	
141:2-142:5	

McKechnie Counter Designation
10:20-22
12:19-13:16
14:8-22
119:11-122:24
123:15-125:17
132:24-133:14

6. NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc. 06-CV-311-JJF
 30(b)(6) Adtech-Gesi, LLC Tim Shadburn May 30, 2007
 (including referenced exhibits)

Designation	Objections to Designations
4:23-4:24	
5:3-5:5	
5:11-5:13	
7:16-8:3	
8:5-8:13	
8:20-9:10	
18:13-18:25	
19:1-19:5	
24:4-24:7	
55:3-55:7	
55:9-55:13	
55:15-55:18	
60:7-60:9	
60:11-60:12	
60:21-60:22	
60:24-60:25	
61:1-61:2	
61:4-61:10	
61:12-61:20	
61:22-61:24	
88:21-88:25	
89:2-89:15	
101:8-101:24	
102:1-102:18	
118:17-119:2	
119:5	
159:20-160:3	
106:5	
163:14-164:21	
226:15-226:17	
226:19-226:22	
226:24-227:7	
227:9-227:12	
Shadburn Counter-Designation	
8:21-24	
9:11-23	
35:19-20	
35:23-24	
36:25-37:5	
37:7-9	
37:11-20	
37:22	
38:8-14	

7. NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc. 06-CV-311-JJF
Spohrer, Daniel August 3, 2007
(including referenced exhibits)

Designation	Objections to Designations
3:22-3:23	
3:24-4:2	
4:9-4:17	
5:17-7:13	
7:18-8:1	
112:12-113:7	
113:9-114:14	

8. NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc. 06-CV-311-JJF
30 (B) (6) Witness Systems, Inc. - Spohrer, Daniel May 24,2007
(including referenced exhibits)

Designation	Objections to Designations
3:21-3:22	
3:25-4:6	
10:1-10:15	

9. NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc. 06-CV-311-JJF
 Warfield, Jan Carel May 31, 2007
 (including referenced exhibits)

Designation	Objections to Designations
3:22-3:23	
4:1-4:3	
4:7-4:9	
15:23-16:20	
16:21-17:11	
19:15-20:5	
20:9-20:11	
21:13-22:8	
111:9-111:15	
111:25-112:9	
128:12-128:20	
158:4-159:8	
160:1-160:25	
180:20-181:7	
196:15-198:10	
202:20-204:4	
216:8-217:11	
218:1-220:25	

Warfield Counter Designations
13:20-14:4
17:12-23
112:10-16
112:22-113:15
129:5-13
144:3-7
144:15-145:5
159:9-11
217:14-18

10. NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc. 06-CV-311-JJF
Watson, Joseph September 6, 2007
(including referenced exhibits)

Designation	Objections to Designations
3:22-3:24	
4:2-4:4	
4:8-4:10	
6:19-7:8	
7:11-7:19	
8:10-8:11	
19:2-19:15	
20:22-21:22	
25:10-25:18	
31:4-31:10	
31:15-31:17	
32:13-33:6	
34:17-35:2	
36:14-37:2	
40:14-40:16	
40:19	
43:25-44:6	
45:4-45:17	
46:11-46:14	
52:16-54:7	
54:15-54:17	
55:9-55:17	
55:21-56:6	
56:10-56:14	
56:23-57:1	
57:21-28:7	
63:14-63:15	
63:18	
69:20-69:23	
70:5-70:11	
75:9-75:13	
75:21-75:24	
76:13-76:15	
76:16-76:17	
76:18-76:19	
76:20-76:24	
80:13-80:17	
80:25-81:3	
81:8	
87:15-87:24	
90:25	
91:1-91:16	
91:19-92:19	
114:19-114:22	
115:5-116:1	
118:5-118:8	
118:24-119:2	

Watson Counter- Designation
25:19-26:1
40:3-5
40:12-13
57:2-3
57:9-20
58:8-59:10
63:19-24
70:12-13
119:3-13
120:1-4
120:7-18

11. STS Software Systems, Ltd v. Witness Systems, Inc. 04-CV-2111-RWS
Wright, Duane Sherington April 11, 2007
(including referenced exhibits)

Designation	Objections to Designations
5:2-5:4	
5:7-5:14	
6:24-8:11	
8:23-10:4	
153:1-153:22	

Wright Counter Designations
8:12-22
152:23-25
156:23-157:1
157:3-13

**12. NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc. 06-CV-311-JJF
Wright, Duane Sherington May 23, 2007**

Designation	Objections to Designations
4:7-4:8	
4:13-4:19	
8:1-8:25	
12:19-14:16	
14:23-15:10	
244:12-244:25	
246:21-247:25	

Wright Counter Designations
12:1-18
245:1-246:13

EXHIBIT 11

DEFENDANT WITNESS SYSTEM INC.'S DEPOSITION DESIGNATIONS

(with NICE's counter-designations)

1. ***Dictaphone Corp. v. NICE Systems Ltd. and NICE Systems, Inc., No. 03-CV-1143 (D. Conn.)***
 Elias-West, C.J. Dec. 5, 2001
 (including referenced exhibits)

Elias-West Designation
5:25-6:2
6:10-15
7:3-9:7
9:12-22
13:15-14:23
16:11-24
17:4-11
18:21-19:25
20:24-22:11
23:3-13
24:1-3
24:12-23
25:1
25:10-26:7
26:12-27:3
28:17-29:2
29:6-23
30:7-31:6
32:11-18
37:5-16
37:18-39:18
39:22-40:5
41:11-21
42:5-12
42:19-25
43:1-25
44:5-45:3
45:15-20
47:9-49:16
56:24-57:13
58:7-20
60:16-19

67:5-7
68:22-69:22
72:12-73:14
85:20-86:3
89:14-15
90:2-12
90:18-25
91:2-3
91:5-92:13
96:24-98:3

NICE's Counter Designations for Elias-West
15:10-16
16:25
17:1-3
24:24-25
26:8-11
27:16-24
28:4-8
29:3-5
32:19-21
37:17
42:13-18
44:1-4
44:11-14
45:21-23
52:1-8
52:15-25
53:1
55:15-17
56:11-22
57:14-19
57:25
58:1-6
59:3-18
60:2-15
66:20-25
67:1-4
67:8-13
69:23-25
70:1-14
71:18-21
74:12-14
74:18-24
81:11-18
85:4-19
86:4-13
88:22-25
89:1-2

2. ***NICE Systems, Inc. and NICE Systems Ltd. v. Witness Systems, Inc.***, 06-CV-311 JJF (D. Del)
 Rozenblat, Yochai Sept. 20, 2007
 (including referenced exhibits)

Rozenblat Designation
4:5-4:21
5:6-5:21
12:9-13:4
13:17-13:23
20:17-22:4
29:16-30:13
38:23-39:12
39:19-41:9
54:6-54:19
55:23-56:20
58:2-58:12
202:3-202:22

NICE's Counter Designations for Rozenblat
54:20-25
55:1-22
56:21-25
57:1-25
58:1
58:13-20

3. ***STS Software Systems Ltd. and NICE Systems Ltd. v. Witness Systems, Inc.,***
No. 1:04-CV-2111 (N.D. Ga.)
 Shamir, Shlomo Sept. 20, 2007
 (including referenced exhibits)

Shamir Designation
3:4-4:8
5:1-5:2
5:6-5:8
6:9-6:11
16:6-16:24
23:9-23:20
28:5-8
28:22-29:1
29:9-13
30:2-17
44:1-45:9
47:16-25
48:8-50:4
50:15-51:4
52:2-52:5
57:17-57:20
59:23-60: 8
60:14-60:15
70:7-72:4
74:15-75:10
75:22-76:4
76:19-77:19
80:10-24
123:22-124:15
144:1-147:25

NICE's Counter Designations for Shamir
4:9-10
23:21-25
24:1-5
27:7-25
28:1-4
28:9-21
29:2-8
29:14-24

43:21-25
45:10-16
47:2-15
48:1-7
48:20-25
49:1-6
50:5-14
52:6-11
57:21-24
58:19-21
59:1
72:5-25
73:1-20
74:7-14
77:20-25
78:1-25
79:1-10
80:4-9
118:25-119:20

4. ***STS Software Systems Ltd. and NICE Systems Ltd. v. Witness Systems, Inc.,***
No. 1:04-CV-2111 (N.D. Ga.)
 Porat, Eran Sept. 21, 2007
 (including referenced exhibits)

Porat Designation
10:14-12:8
16:6-16:12
17:20-17:25
132:3-135:6
137:10-137:16
139:6-139:13
140:11-140:16
146:19-146:25
194:1-196:25

NICE's Counter Designations for Porat
88:15-25
89:1-25
90:1-3
107:5-8
107:11-18
108:18-25
109:1-25
110:1-25
111:1-25
112:1-25
113:1-25
114:1-25
115:1-3
116:25

117:1-5
117:17-25
118:1-12

EXHIBIT NO. 12 TO THE JOINT PRE-TRIAL ORDER

NICE'S STATEMENT OF INTENDED PROOFS

NICE intends to prove the matters set forth below during the trial of this case. NICE incorporates by reference the expert reports submitted by NICE.

I. The Parties.

A. NICE Systems, Ltd. and NICE Systems, Inc.

1. NICE Systems, Ltd. ("NICE") is a worldwide leader in computer software and systems for recording and analyzing electronic communications, such as telephone calls. NICE Systems, Ltd., through its subsidiaries, provides products and services throughout the world for capturing, recording, quality monitoring, and analyzing customer interactions.

2. NICE Systems, Inc. ("NICE") is a subsidiary of NICE Systems, Ltd. NICE Systems, Inc.'s customers are from a wide range of organizations, including health care companies, utility companies, financial companies and telecommunication companies.

B. Verint Americas Inc. (formerly Witness Systems, Inc.).

3. In May 2007, Verint Systems, Inc. acquired Witness Systems, Inc. for about one billion dollars (\$950,000,000.00). Witness Systems, Inc. was a provider of computer software for recording electronic communications. Witness Systems, Inc. sold products and services similar to those provided by NICE throughout the world. In this case, NICE originally sued Witness Systems, Inc., a Delaware corporation, for patent infringement in May 2006. After Verint Systems, Inc. acquired Witness Systems, Inc., Verint changed Witness Systems, Inc.'s name to Verint Americas Inc. (hereinafter Witness Systems, Inc. and Verint Americas Inc. are both referred to as "Witness"). Previously, in April 2003, Witness acquired Eyretel PLC. As a result, Witness assumed the liability for Eyretel's infringement of NICE's patents.

II. Overview of the Technology.

4. The patents and products at issue in this case generally relate to methods and systems for monitoring and recording electronic communications, such as telephone calls.¹ Telephone call monitoring and recording systems are used in a variety of contexts, including commercial call centers. NICE's patented inventions and products allow for efficient storage and retrieval of telephone calls and other electronic communications. (The text below focuses on telephone calls, but unless specified otherwise, the discussion is applicable to electronic communications in general.)

5. The advancements in electronic communications in the past 20 years have created both opportunities and difficulties for efficient storage and playback of telephone calls. The technology described by the NICE patents and embedded in NICE's products have taken advantage of the opportunities and overcome the difficulties in several ways. For example, the NICE patents describe and NICE's products provide recorders and recording systems that allow for playback of a stored telephone call without losing the ability to continue to record the audio of the same or another telephone call. In addition, the NICE patents describe and NICE's products provide recorders and recording systems that are modularized (that is, broken up into discrete components) and can be distributed throughout a communications network. As a final example, the NICE patents describe and NICE's products provide for recording systems and methods for recording a call by conferencing in a recorder as a participant in a call.

¹ NICE sued Witness for infringement of the following patents: U.S. Patent Nos. 5,274,738 (the "738 patent"); 5,396,371 (the "371 patent"); 5,819,005 (the "005 patent"); 6,249,570 (the "570 patent"); 6,728,345 (the "345 patent"); 6,775,372 (the "372 patent"); 6,785,370 (the "370 patent"); 6,870,920 (the "920 patent"); 6,959,079 (the "079 patent") and 7,010,109 (the "109 patent"), collectively referred to as the "NICE patents".

III. The Patented Inventions.

A. The NICE Patents Embrace Four Technology Areas.

6. The NICE patents in this case relate generally to methods and systems that are used for recording electronic communications, such as, in a call center, *i.e.*, a centralized office used to receive and process large numbers of telephone calls. These patents generally relate to four technologies. First, the '371 patent relates to methods and systems that allow audio data to be retrieved from a digital audio logger while continuing to record other audio data. Second, the '109 patent relates to methods of recording a telephone call by conferencing a recording device as an additional participant into the call. Third, the '372 and '920 patents relate to methods and systems for voice processing and recording that are modularized and can be connected to networks. Fourth, the '570 patent relates to a method and system that records, stores and reconstructs information about a telephone call, including the various participants who may enter and exit a call, such as a customer service supervisor at a call center. In other words, generally recording voice (or other information) over the lifetime of the call.

B. Retrieving Data While Recording Other Audio Data - The '371 Patent.

7. The inventors conceived of the invention embodied by the claims of the '371 patent by April 19, 1991. They made diligent efforts toward reducing that invention to practice, and filed the application that led to the '371 patent in December 1993 with the United States Patent and Trademark Office ("Patent Office"). The patent application was entitled "Endless Loop Voice Data Storage and Retrievable Apparatus and Method Thereof." The Patent Office examined the claims of the application, searched for prior art, and compared the claims of the application to the prior art. The references cited by the Patent Office on the face of the '371 include 12 U.S. patent documents and one foreign patent document. After carefully examining the application, the Patent Office determined that the claims of the '371 patent exceeded the

requirements for patentability, including that the invention embodied by the claims was novel and would not have been obvious. The Patent Office issued the '371 patent on March 7, 1995 to Dictaphone Corporation, the assignee of the inventors. NICE Systems, Inc. is presently the owner of the '371 patent by assignment from Dictaphone. NICE Systems, Inc. also obtained from Dictaphone the right to sue and recover for past damages caused by infringement of the '371 patent.

8. The '371 patent describes and claims methods, systems and a device for processing, storing and retrieving audio from a digital logger. The invention claimed by the '371 patent allows audio data to be retrieved from a digital logger while the digital logger records incoming audio data. In other words, the recorded audio data can be retrieved from a digital logger without interrupting or interfering with the continuous recording of incoming audio data.

C. Recording By Conferencing a Recorder as a Participant to a Call - The '109 Patent.

9. The inventors conceived of the invention embodied by the claims of the '109 patent by August 28, 2000. They made diligent efforts toward reducing that invention to practice and filed with the Patent Office a patent application in August 2001, and later, in March 2005, a continuation of that patent application that led to the '109 patent. The patent applications were entitled "Digital Recording of IP Based Distributed Switching Platform." The Patent Office examined the claims of the applications, searched for prior art, and compared the claims of the applications to the prior art. The references cited by the Patent Office on the face of the '109 patent include 12 U.S. patent documents, one foreign patent document and one other publication. After carefully examining the application, the Patent Office determined that the claims of the '109 patent exceeded the requirements for patentability, including that the invention embodied by the claims was novel and would not have been obvious. The Patent Office issued the '109

patent on March 7, 2006 to NICE Systems, Ltd., the assignee of the inventors. NICE Systems, Ltd. is presently the owner of the '109 patent.

10. The '109 patent describes and claims methods for recording electronic communications between two or more communication devices, in other words telephone calls. The communication devices used in the '109 method include both Internet Protocol, or IP, telephones and non-IP telephones. The invention claimed by the '109 patent provides for recording telephone calls by entering a recording device as a participant in the call using a conference controller so that the recording device receives the telephone call by use of a data network.

D. Modularized and Networked Recording Methods and Systems.

1. The '372 Patent.

11. The inventor conceived of the invention embodied by the claims of the '372 patent by April 4, 1997. He made diligent efforts toward reducing that invention to practice and filed with the Patent Office the application that led to the '372 patent in June 1999. The patent application was entitled "System and Method for Multi-Stage Data Logging." The Patent Office examined the claims of the application, searched for prior art, and compared the claims of the application to the prior art. The references cited by the Patent Office on the face of the '372 patent include 73 U.S. Patent documents, four foreign patent documents and 44 other publications. After carefully examining the application, the Patent Office determined that the claims of the '372 patent exceeded the requirements for patentability, including that the invention embodied by the claims was novel and would not have been obvious. The Patent Office issued the '372 patent on August 10, 2004 to Dictaphone Corporation, the assignee of the inventor. NICE Systems, Inc. is presently the owner of the '372 patent by assignment from

Dictaphone. NICE Systems, Inc. also obtained from Dictaphone the right to sue and recover for past damages caused by infringement of the '372 patent.

12. The '372 patent describes and claims a multi-stage data logging system. The claimed logging system includes three stages: (i) a telecommunications stage that receives input from several input channels, (ii) a recorder stage that stores data associated with the information received by the telecommunications stage and (iii) a distribution stage that provides access to the stored information. The claimed logging system is designed so that at least two of the stages are physically separable and can be located wide distances apart.

2. The '920 Patent.

13. The inventor conceived of the invention embodied by the claims of the '920 patent by April 4, 1997. He made diligent efforts toward reducing that invention to practice and filed with the Patent Office the application that led to the '920 patent in July 2002. That application had the same specification as, and was a divisional application of, the June 1999 application that led to the '372 patent. The Patent Office examined the claims of the application, searched for prior art, and compared the claims of the application to the prior art. The references cited by the Patent Office on the face of the '920 patent include 17 U.S. Patent documents, nine foreign patent documents and 38 other publications. After carefully examining the application, the Patent Office determined that the claims of the '920 patent exceeded the requirements for patentability, including that the invention embodied by the claims was novel and would not have been obvious. The Patent Office issued the '920 patent on March 22, 2005 to Dictaphone Corporation, the assignee of the inventor. NICE Systems, Inc. is presently the owner of the '920 patent by assignment from Dictaphone. NICE Systems, Inc. also obtained from Dictaphone the right to sue and recover for past damages caused by infringement of the '920 patent.

14. The '920 patent describes and claims a method for accessing information stored by one or more digital loggers. The information stored by the logger comes from multiple "input channels." For example, the stored information can be a voice recording made from telephone calls on multiple, different telephone lines. The claimed method generally relates to the use of a computer network server, a Web server, that responds to a person's request made at a computer terminal to retrieve the stored information.

E. The Lifetime of a Call Recording-the '570 Patent

15. The inventors conceived of the invention embodied by the claims of the '570 patent by July 9, 1997. They made diligent efforts toward reducing that invention to practice and filed with the Patent Office the patent application that led to the '570 patent in June 1999. That patent application was titled "System and Method for Recording and Storing Telephone Call Information." The Patent Office examined the claims of the application, searched for prior art, and compared the claims of the application to the prior art. The references cited by the Patent Office on the face of the '570 patent include 69 U.S. Patent documents and four foreign patent documents. After carefully examining the application, the Patent Office determined that the claims of the '570 patent exceeded the requirements for patentability, including that the invention embodied by the claims was novel and would not have been obvious. The Patent Office issued the '570 patent on June 19, 2001 to Dictaphone Corporation, the assignee of the inventors. NICE Systems, Inc. is presently the owner of the '570 patent by assignment from Dictaphone. NICE Systems, Inc. also obtained from Dictaphone the right to sue and recover for past damages caused by infringement of the '570 patent.

16. The '570 patent describes and claims a system and method for computer-aided monitoring and recording of complete telephone calls. The invention claimed by the '570 patent generally relates to a system and method for collecting and storing data related to a

telephone call from multiple sources that facilitates monitoring, recording and playing back of complete telephone calls (the lifetime of the call).

IV. Witness' Infringement.

17. Witness² products and software record electronic communications, such as telephone calls, for full-time recording (e.g., recording all telephone calls) and for quality monitoring (e.g., recording some calls based on selected criteria.)² Witness' products and software include the ability to record analog and digital TDM telephone calls, as well as IP telephone calls. Witness' products and software allow users to access recorded calls by using a Web server. A user may access recorded calls while the recorder continues to record audio from telephone calls. The graphical user interface used in Witness' products also allows a user to play back multiple segments of a single call, that is the lifetime of a call.

18. When used for recording telephone calls, Witness' products and software:

- allow a user to retrieve audio data from a digital logger while the digital logger records other incoming audio data;
- record telephone calls including by conferencing a recording device as a participant in a call so that the recording device receives the telephone call between other participant(s);

² As of the filing of the complaint in this action, Witness has sold its products under various trade names. NICE filed on December 17, 2007 an Identification of Witness' Core Recording Products Accused of Infringement identifying the Witness products that infringe the NICE patents. NICE incorporates the Identification of Witness' Core Recording Products Accused of Infringement by reference in this Exhibit. NICE incorporates the expert reports of John Henits by reference in this Exhibit.

- include a telecommunications stage that receives input from several input channels, a recorder stage that stores data, and a distribution stage that provides access to the stored data;
- allow a user to make a request from a computer terminal that a Web server retrieve for playback the stored data; and
- facilitate monitoring, recording and playing back of complete telephone calls (the lifetime of the call), including by associating the data related to a specific telephone call with a “master call record” that allows a call to be replayed in its proper sequence regardless of how the data is actually stored.

19. Witness’ products and software infringe the following claims of the NICE patents asserted in this case:

- claims 1 and 8 of the ’371 Patent, literally and under the doctrine of equivalents;
- claim 6 of the ’570 patent, literally and under the doctrine of equivalents;
- claims 1, 15 and 33 of the ’372 patent, literally;
- claims 1, 16 and 21 of the ’920 patent, literally; and
- claims 1 and 6 of the ’109 patent, literally and under the doctrine of equivalents.

20. Witness’ infringement is willful. Despite knowledge of the NICE patents, Witness sells, offers for sale, manufactures, and distributes products and software that infringe the NICE patents. Through its advertisements, promotions, demonstrations, sales efforts, sales, customer training, publications and distribution of product specifications, brochures, catalogues, owner’s and user’s manuals, and other activities, Witness actively contributed to infringement or induced others to infringe, or both, the claims of the NICE patents. In all these instances, Witness acted despite an objectively high likelihood that it infringed NICE’s valid patents.

V. NICE's Damages.

21. NICE and Witness are direct competitors. NICE has sold and continues to sell products, including NICE Perform[®], NICE Log[®] and NICE Universe[®] that incorporate the inventions claimed by the NICE patents.³ NICE has lost sales because of Witness' infringement of the NICE patents. NICE would have made the sales made by Witness of its infringing products but for Witness' infringement.

22. Dictaphone has sold products, including Freedom[®], da Vinci[®], ProLog[®] and Guardian[®], that incorporate the inventions claimed by the NICE patents.⁴

23. Many of the infringing products sold by Witness are made through an Original Equipment Manufacturer ("OEM") company, Avaya Inc. NICE sells competing products through the same OEM company, Avaya. But for Witness' infringement, NICE would have made through Avaya sales of NICE's products that instead Witness made through Avaya.

24. There is a strong demand for products that incorporate the technology embraced by the NICE patents. This demand is evident from the substantial sales of NICE's products that incorporate the patented technology and the sales by Witness of infringing products.

25. There are no acceptable non-infringing substitutes to NICE's patented products.

³ The details of which NICE products are covered by the claims asserted in this case are set forth in the expert report of John Henits on validity issues. NICE incorporates by reference that report in this Exhibit.

⁴ The details of which Dictaphone products are covered by the claims asserted in this case are set forth in the expert report of John Henits on validity issues.

26. NICE had the capability, financial and otherwise, to produce the additional NICE products that would have been sold, but for Witness' sale of infringing products. NICE had sufficient existing manufacturing and marketing capability at the time Witness made its infringing sales, or NICE would have been able to expand its capacity, to fulfill increased demand.

27. Lost profits is the appropriate measure of damages for some of Witness' infringing and convoyed sales.⁵

28. In addition to its lost profits, based on the fifteen *Georgia-Pacific* factors and a hypothetical reasonable royalty negotiation between NICE and Witness, NICE is entitled to be compensated by a reasonable royalty for the part of Witness' infringing and convoyed sales not included in the lost profit calculations.

29. NICE is entitled to increase its damages award by a factor of three because Witness' infringement of the NICE patents has been and continues to be willful. Witness knew about the NICE patents, and acted despite a high likelihood that its actions constituted infringement of NICE's valid patents.

30. NICE is entitled to prejudgment interest to afford NICE full compensation for Witness' infringement.

31. NICE is entitled to recover attorney fees and costs, pursuant to 35 U.S.C. § 285, because the willfulness of Witness' infringement means that this case is an "exceptional case."

⁵ The details of the calculation of NICE's damages are set forth in the expert report of Thomas W. Britven provided in this case. NICE incorporates by reference that report in this Exhibit.

VI. Witness' Attacks Challenging the Patents Are Unfounded.

32. NICE expects that Witness will argue at trial that certain of the asserted claims are not novel or would have been obvious in view of certain references Witness has identified. Witness has not shown that any of the references that it has identified, either alone or in combination, contain each and every limitation of any asserted claim so as to show that the claimed inventions were not novel or would have been obvious.

33. For the references that NICE expects that Witness will rely on in combination, Witness has not shown any reason to combine the teachings, or that the combination of teachings would provide an operable embodiment of the invention. Witness attempts to rely on impermissible hindsight to reconstruct the inventions from a combination of references using the disclosure of the invention as a blueprint.

34. In examining the NICE patent applications, and those filed for the continuations and continuations-in-part, the Patent Office considered all of the prior art of record, alone and in combination, and determined that the claimed inventions of the NICE patents were patentably distinguishable from previous teachings.

35. The non-obviousness of the claimed inventions is further supported by secondary considerations or objective "indicia" of non-obviousness. For example, the inventions described in the NICE patents have enjoyed significant commercial success. The success is shown by significant and continuing sales of NICE's and Witness's products, which are attributable to the patented technology incorporated in these commercial embodiments of the invention.

36. In addition, the inventions described in the NICE patents have been recognized as superior to prior technology. NICE and Dictaphone have received awards for their respective products that incorporate the patented technology.

EXHIBIT NO. 13 TO THE JOINT PRE-TRIAL ORDER

***Witness Systems' Statement of Intended Proofs Regarding
Witness Systems' Defenses and Counterclaims***

Witness Systems intends to prove the matters set forth below during the trial of this case. Further details of these proofs have been explained in Witness Systems' interrogatory responses, and by the experts in their depositions.¹ Witness Systems reserves the right to supplement this exhibit after expert depositions are completed.

I. BACKGROUND

1. The founding, history and business of Witness Systems.
2. The nature and operation of Witness Systems' products.
3. The founding, history and business of NICE Systems Ltd. and NICE Systems, Inc. (collectively, "NICE").
4. The nature and operation of NICE's products.
5. The history of Eyretel Plc's business and products, including the facts and circumstances surrounding its pursuit by potential acquirers, culminating in its acquisition by Witness Systems.
6. The history of Dictaphone Corporation's business and products and the facts and circumstances regarding Dictaphone's divestment of its Communications Recording Systems ("CRS") business and patents, including Dictaphone's efforts to find potential acquirers and NICE's eventual acquisition of CRS.

II. NON-INFRINGEMENT

Witness Systems intends to prove that the Witness Systems products accused of infringement by NICE do not infringe the asserted claims of the patents-in-suit. To the extent

¹ Witness Systems hereby incorporates by reference the contents of each expert report submitted by Witness Systems' retained experts, Brian W. Napper, John M. Strawn, and Jeffrey S. Vitter.

that the finder of fact concludes that any of Witness Systems accused products infringes any of the asserted claims of any of the patents-in-suit, Witness Systems intends to prove that no infringement was willful. Witness Systems intends to prove the following:

1. Witness Systems has not infringed, directly, indirectly, literally or by the doctrine of equivalents, the asserted claims of the patents-in-suit.
2. By virtue of proceedings in the USPTO during the prosecution of the applications that matured into the patents-in-suit, as illustrated by their prosecution histories, NICE is estopped from asserting that Witness Systems has infringed the patents-in-suit under the doctrine of equivalents.
3. Witness Systems has not induced any third parties to infringe the asserted claims of patents-in-suit.
4. Witness Systems has not sold or offered to sell the accused products in a way that contributed to the infringement of the asserted claims of patents-in-suit by others.
5. Witness Systems alleged infringement of the asserted claims of the patents-in-suit was not willful.

III. INVALIDITY

Witness Systems intends to prove that the asserted claims of the patents-in-suit are invalid under at least 35 U.S.C. §§ 102 and 103. Witness Systems intends to prove the following:

1. The asserted claims of the patents-in-suit are invalid because they are anticipated by the prior art under 35 U.S.C. § 102.
2. The asserted claims of the patents-in-suit are invalid because they are obvious under 35 U.S.C. § 103.

IV. INEQUITABLE CONDUCT

Witness Systems intends to prove that the '371 patent is unenforceable due to inequitable conduct. Witness Systems intends to prove the following:

1. One or more persons associated with the filing and prosecution of the application that led to the '371 patent intentionally failed to disclose to the United States Patent & Trademark Office ("USPTO"), during prosecution, information of which they were aware that is material to the examination of the application, in violation of the duties of candor and good faith required under 37 C.F.R. 1.56.

V. UNCLEAN HANDS

Witness Systems intends to prove that the patents-in-suit are unenforceable due to unclean hands. Witness Systems intends to prove the following:

1. NICE is barred from enforcing the patents-in-suit against Witness Systems because it (or its predecessor) acted inequitably, unfairly, or deceitfully towards Witness Systems, the Court, and/or the USPTO in a way that has immediate and necessary relation to the relief NICE seeks in this lawsuit.

VI. LACHES

Witness Systems intends to prove the defense of laches bars NICE's claims of patent infringement. Witness Systems intends to prove the following:

1. NICE (and/or its predecessor, Dictaphone Corp. ("Dictaphone")) delayed in bringing a lawsuit for an unreasonable and inexcusable length of time after it knew or should have known of the potential infringement, resulting in material prejudice or injury to Witness Systems.

VII. EQUITABLE ESTOPPEL

Witness Systems intends to prove the defense of equitable estoppel bars NICE's claims of patent infringement. Witness Systems intends to prove the following:

1. NICE and/or Dictaphone created, through words, conduct, or silence, a misleading inference that it did not intend to press an infringement claim against Witness Systems and/or Eyretel Plc.
2. Witness Systems and/or Eyretel Plc substantially relied upon NICE's and/or Dictaphone's misleading conduct.
3. Witness Systems will suffer material economic or evidentiary prejudice if NICE is permitted to proceed with its infringement claim.

VIII. DAMAGES AND OTHER RELIEF

Witness Systems intends to prove that NICE is not entitled to the damages and other relief it seeks. Witness Systems intends to prove the following:

1. NICE is not (nor has it ever been) damaged by any alleged infringement by Witness Systems.
2. Lost profits is not an appropriate measure of damages in this case.
3. Acceptable non-infringing substitutes for the patented inventions exist(ed).
4. NICE is not entitled to injunctive relief in this case.

IX. MISCELLANEOUS

Witness Systems contends the following proofs are undisputed, yet NICE refused to include them within the statement of admitted facts. Accordingly, Witness Systems intends to prove them at trial:

1. Documents that were produced by NICE in this litigation and which were created by NICE are presumptively authentic.
2. Documents that were produced by NICE from NICE's business files presumptively constitute business records within F.R.E. 803(6).
3. In April of 1999, Dictaphone sent Eyretel an undated letter informing it that Dictaphone believed Eyretel was infringing the '371 and '005 Patents. In that letter, Dictaphone claimed it was "willing to license the proprietary technology which is the subject matter of the aforementioned patents to Eyretel. In a series of seven subsequently exchanged letters (together with the initial undated April 1999 letter, collectively referred to as the "the 1999 Letters"), Dictaphone and Eyretel corresponded about the infringement claim and the possibility of Eyretel licensing the technology covered by the '371 and '005 Patents. In the 1999 Letters, Dictaphone identified specific Eyretel products (E-1000, E-500, and Mediastore series communications logging devices) that Dictaphone believed infringed the '371 and '005 Patents. Eyretel responded by denying Dictaphone's allegations in a detailed response. Finally, on August 9, 1999, Eyretel sent a letter to Dictaphone rejecting a request by Dictaphone to have a meeting concerning the '371 and '005 Patents and informing Dictaphone that Eyretel "shall consider the matter closed." From that point on, Dictaphone did not pursue the matter

4. In the time between the 1999 Letters and the initiation of this suit, Witness Systems invested heavily in research and development and enjoyed increased revenues from products and services by tenfold.
5. In this lawsuit, NICE accuses Witness Systems of willful infringement of ten patents. During fact discovery, Witness Systems asked NICE to specify with particularity its basis for alleging willfulness. In response, NICE said only:

Witness has prior knowledge of the patents in suit prior to the filing of the Complaint in the present action. Moreover, Witness continues [sic] market and sell the Accused Products throughout the United States without regard to the patents.

6. NICE did not move for a preliminary injunction to stop Witness Systems' alleged willful infringement, in this case.
7. Witness Systems provided NICE with charts showing in detail the noninfringement of each asserted claim on an element-by-element basis. Witness Systems' invalidity contentions identify over fifty prior art references and the accompanying charts establish, in detail, the invalidity of each asserted claim on an element-by-element basis. Witness Systems also provided the Court with a list of patent claim terms to construe, and Witness Systems' interpretation and construction of the claims based on the prosecution history, inventor testimony, patent specification, and knowledge of one skilled in the art.
8. Prior to January 2006, NICE never marked any of its products with the U.S. Patent number of the '371 patent, the '005 patent, the '570 patent, the '345 patent, the '372 patent, the '370 patent, or the '920 patent. Prior to March 2006, NICE did not mark its NICE Perform Compliance Suite with the U.S. Patent number of the '371 patent, the '005 patent, the '570 patent, the '345 patent, the '372 patent, the '370 patent, or the '920 patent.
9. Prior to March 2006, NICE never marked any of its products with the U.S. Patent number of the '109 patent.
10. On June 19, 2000, Dictaphone sued NICE for in the U.S. District Court for the District of Connecticut ("the *Dictaphone v. NICE* litigation"), alleging infringement of two patents, including the '371 patent.
11. In response, NICE alleged that the '371 patent is invalid, and NICE alleged that the '371 patent is unenforceable because of the inequitable conduct of one or more individuals associated with the filing and prosecution of the application that led to the '371 patent.

12. During the course of the *Dictaphone v. NICE* litigation, NICE retained an expert, Kenneth C. Pohlmann, who submitted a report of his expert opinions regarding, *inter alia*, the invalidity of the '371 patent. It was Mr. Pohlmann's expert opinion that the '371 patent is invalid.
13. During the course of the *Dictaphone v. NICE* litigation, NICE retained an expert, John Goolkasian, who submitted a report of his expert opinions regarding, *inter alia*, the unenforceability of the '371 patent. It was Mr. Pohlmann's expert opinion that the '371 patent is unenforceable, because of the inequitable conduct of one or more individuals associated with the filing and prosecution of the application that led to the '371 patent.

EXHIBIT 14 TO THE PRE-TRIAL ORDER

**NICE'S STATEMENT OF MISCELLANEOUS ISSUES TO BE
ADDRESSED AT THE PRE-TRIAL CONFERENCE**

NICE requests that the following miscellaneous issues be addressed at the Pre-Trial Conference on January 9, 2008.

1. Rebuttal Witnesses

NICE requests that the Court address issues of trial procedure and schedule. In particular, NICE requests that it be allowed to reserve time for rebuttal witnesses to respond to issues addressed by Witness during its case-in-chief.

2. Pending Motions *In Limine*

The following motions *in limine* are pending before the Court:

a. NICE's Pending Motions *In Limine*:

- (1) Motion *in Limine* to Preclude Admission of Evidence Related to the Dictaphone v. NICE Litigation
- (2) Motion *in Limine* to Preclude Admission of Evidence Related to Laches and Equitable Estoppel
- (3) Motion *in Limine* to Preclude Use of Evidence Improperly Raised in Defendant's Expert Reports

b. Witness' Pending Motions *In Limine*:

- (1) Motion *in Limine* to Exclude Untimely Disclosed Witnesses (NICE contends that this motion has been rendered moot by Witness' intention to use the deposition testimony of Eran Porat and Shlomo Shamir at trial.)

(2) Motion *in Limine* to Exclude Infringement Accusations Against Nortel Products and Witnesses¹

(3) Motion *in Limine* to Preclude Plaintiffs' Reliance on Doctrine of Equivalence for Certain Claim Limitations

3. Authenticity and Admissibility of Documents Produced by NICE

With regard to authentication and admissibility of NICE trial exhibits, NICE's position is that any document, that on its face appears to have been authored by an employee or officer of NICE at the time the employee or officer was employed by NICE, shall be deemed authentic, subject to the right of the party against whom such a document is offered to adduce evidence to the contrary. It is also NICE's position that any document, that on its face appears to have been authored by an employee or officer of Dictaphone, Inc. at the time the employee or officer was employed by Dictaphone, Inc. shall be deemed authentic, subject to the right of the party against whom such a document is offered to adduce evidence to the contrary.

With regard to the authenticity of Witness' trial exhibits, it is NICE's position that to the extent it seeks to admit a document produced in this litigation, it can rely on, among other things, Witness admissions made in response to discovery requests. Witness admitted, in its Response to NICE's First Set of Requests for Admission dated March 5, 2007, that "documents that were produced by it in this litigation and which were created by Witness are presumptively authentic" and that "the documents it produced from its business files presumptively constitute business records within F.R.E. 803(6)."

¹ NICE has not included Messrs. Moran and Murray on its witness list. Thus, the portion of Witness' motion seeking to preclude their deposition testimony has been rendered moot.

4. Scope of Expert Testimony

a. In general

NICE requests the Court to explain the procedure in the event during the trial, a party believes an expert's testimony exceeds the scope of the expert's Rule 26 report.

b. Witness Systems' Damages Expert

Witness Systems' damages expert, Brian Napper, produced an expert opinion which allegedly relies on the oral "opinions" of Witness' technical experts, Drs. Jeffrey Vitter and John Strawn to establish that non-infringing acceptable substitutes for each claim at issue. Drs. Jeffrey Vitter or John Strawn, however, did not provide an opinion on the issue of non-infringing acceptable substitutes in their Rule 26 reports. NICE contends that Witness has failed to comply with Fed. R. Civ. P. 26a(2)(B) which requires Drs. Jeffrey Vitter and John Strawn to have submitted a written report on this issue, and cannot cure its failure at trial through Brian Napper. Therefore, NICE objects to Brian Napper's use or reliance on the oral "opinions" relating to non-infringing acceptable substitutes of Drs. Jeffrey Vitter and John Strawn at trial.

5. Opening Statements

NICE seeks clarification on the evidence the Court allows parties to use during opening statements.

EXHIBIT 15 TO THE PRE-TRIAL ORDER

***Witness Systems' Statement of Miscellaneous Issues to be Addressed
at the Pre-Trial Conference***

Witness Systems provides the following responses to NICE's Statement of Miscellaneous Issues to be Addressed at the Pre-Trial Conference:

1. Rebuttal Witnesses

To the extent NICE's proposal is consistent with the Section D.(c) of the Court's Sample Trial Management Order, Witness Systems does not object. Specifically, Witness Systems does not object to NICE's intent to call rebuttal witnesses, so long as (a) the witnesses are called in support of an issue on which NICE bears the burden of proof, (b) the witnesses are noticed in the Pre-trial Order, and (c) such witnesses are necessary to avoid an injustice and cause is established.

Witness Systems similarly requests that it be allowed to reserve time for rebuttal witnesses consistent with the terms of the Court's Trial Management Order.

2. Trial Time Allotment

Witness Systems requests that the Court address the amount of trial time each party will be allocated to present its respective case.

3. Authenticity and Admissibility of Documents Produced By NICE

Witness Systems requests that the Court address the admissibility of documents that (a) were created by NICE or its predecessor-in-interest, and (b) produced by NICE in this litigation. NICE refuses to admit that such documents presumptively constitute business records within F.R.E. 803(6). In contrast, Witness Systems has agreed to the same conditions with respect to the documents it produced, created by its predecessor companies.

4. **Procedure Governing the Identification of Evidentiary and Demonstrative Exhibits**

Witness Systems requests that the Court address the parties' respective proposals regarding the identification of evidentiary and demonstrative exhibits during trial. The relevant proposals are outlined in Section VI. of the Proposed Pretrial Order. Among the various differences, Witness Systems proposes that each party identify (by 7:00 p.m. on the day preceding an exhibit's use) the evidentiary exhibits the party intends to use. NICE's proposal does not contain any procedure for identifying evidentiary exhibits prior to their use.

5. **Pending Motions in Limine**

Witness Systems requests that the Court hear arguments concerning the parties' various Motions *in Limine* pending before the Court.

6. **Attendance of Non-Party Former Employee at Trial**

NICE has subpoenaed for its case in trial a former Witness Systems' employee, Mr. Carel Warfield, now employed by another company. NICE took Mr. Warfield's deposition during this case, and has designated a small portion of his testimony for presentation at trial. Mr. Warfield is scheduled to be in Florida on business for his new employer, and could not appear at trial until Wednesday, January 16, 2008 at the earliest. Because NICE already deposed Mr. Warfield in this action and designated his testimony for presentation at trial, and because he is no longer employed by Witness Systems and will be traveling on business for his new employer during the trial, Witness Systems requests that NICE rely on Mr. Warfield's deposition testimony and that he not be required to attend the trial.

7. **Attendance of Current Employees at Trial**

NICE has stated that it "expects" two Witness Systems employees, Dr. Christopher Blair, and Mr. Dan Spohrer, to be present and available throughout the trial of this case. Witness

Systems plans to call each of these individuals as witnesses in its case in chief, and NICE has deposed each of them multiple times in this and the related cases. Dr. Blair will be traveling from the United Kingdom, and Mr. Spohrer will be traveling from Atlanta, Georgia. To avoid both of these individuals being called as witnesses two separate times during the trial, and needing to stay in Wilmington for additional days, Witness Systems proposed that Dr. Blair and Mr. Spohrer each be called as witnesses only once, during Witness Systems' case in chief, but that NICE be allowed to conduct a broader scope of cross-examination of these two individuals to establish whatever facts NICE believes necessary to support its case in chief. This proposal would also minimize the need for these two individuals to spend additional unnecessary time at the trial. Alternatively, Witness Systems proposed that NICE use one of the many deposition transcripts of Dr. Blair and Mr. Spohrer to establish facts for NICE's case in chief. In fact, NICE has already designated deposition testimony from Mr. Spohrer.

Witness Systems requests that Dr. Blair and Mr. Spohrer only be required to testify once each, during Witness Systems' case in chief, as set forth in Witness Systems' proposal above.

8. Evidence of Noninfringing Alternatives

Witness Systems requests that its' damages expert, Mr. Brian Napper, be permitted to testify about his opinions concerning the availability of non-infringing alternatives (an issue on which NICE bears the burden of proof), which opinions were based in part on Mr. Napper's discussions with Witness Systems' technical experts. Mr. Napper's opinions and the bases therefore were disclosed fully in Mr. Napper's expert reports before NICE took the depositions of either of Witness Systems' technical experts, or Mr. Napper.